TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 966

CHARLES JOBIN, APPELLANT,

vs.

THE STATE OF ARIZONA

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

FILED FEBRUARY 19, 1942.

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[fol. 3]

IN THE POLICE COURT OF THE CITY OF CASA GRANDE, PENAL COUNTY, STATE OF ARIZONA

THE STATE OF ARIZONA

against

CHAS JOBIN, Defendant

AMENDED COMPLAINT

Personally appeared before me this 22nd day of August, 1940, Guy Baker of said City of Casa Grande, who being first duly sworn complains and says: That one Chas. Jobin, on or about the 15th day of August, 1940, at said City of Casa Grande, County and State aforesaid, committed a misdemeanor as follows, to-wit:

That said Chas. Jobin, not then and there having a permanent place of business in the City of Casa Grande, County and State aforesaid, did then and there wilfully and unlawfully carry on the business of peddling, vending, selling, offering for sale and soliciting the sale of goods, wares and merchandise, to-wit: pamphlets, books and publications without first having procured a license from the said City of Casa Grande so to do, as required by Ordinance Number 101, New Series, of said City of Casa Grande.

All of which is contrary to the form of the ordinance in such cases made and provided, and against the peace and dignity of the City of Casa Grande, and the said State of Arizona.

Guy Baker.

Subscribed and sworn to before me this 22nd day of August, 1940. Walter B. Love, Jr., Police Magistrate.

Filed Oct. 8, 1940. T. J. Marks, Clerk, Superior Court of Pinal County.

1—966

[fol. 4] EXHIBIT "A" TO AMENDED COMPLAINT

Business License Ordinance

Casa Grande, Arizona

Ordinance Number 101, New Series

An Ordinance of the Mayor and the Common Council of the City of Casa Grande, Arizona, Providing for Licensing and Regulating the Carrying on and/or Operating of Certain Professions, Trades, Callings, Businesses and Occupations Carried on Within the Limits of the City of Casa Grande, Arizona, and Providing Punishment for Violations Hereof, Repealing All Ordinances and Parts of Ordinances in Conflict Herewith and Declaring an Emergency.

Be It Ordained by the Mayor and Common Council of the City of Casa Grande, Arizona, as Follows, to-wit:

Section 1

It shall be unlawful for any person or persons, firms, associations or bodies corporate, or otherwise, or as officers of any corporation, to carry on any trade, calling, profession, occupation or business, in this ordinance specified, without first having procured a license from the City of Casa Grande, so to do, or complying with any and all regulations of such trade, calling, profession, occupation or business mentioned in this ordinance, and each and every day or fractional part of a day that any trade, calling, profession, business or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor, and, except where a different punishment is prescribed by this ordinance, the offender shall be punished by a fine of not more than Two Hundred Dollars ($200.00), or imprisonment in jail for a term of not more than Ninety (90) days, or by both such fine and imprisonment; and the amount of such license fee shall be deemed a debt due and owing to the City of Casa Grande in any court of competent jurisdiction, and such person or persons, firm, association or body corporate, so failing to pay any such license shall be liable to an action in the name of the City of Casa Grande for the amount of the license fee of such trade, calling profession, business or

occupation as he or they shall be engaged in, together with all costs of suit and a reasonable attorney's fee shall also be awarded to the said City of Casa Grande by said court for the bringing of said suit.

Section 2

It shall be the duty of the City Clerk of the City of Casa Grande to prepare and to issue a license under this ordinance for every person, firm, company, or corporation liable to pay a license hereunder, and to state in each license the amount thereof, the period of time covered thereby, the name of the person, firm or corporation for whom issued, the trade, calling, profession, occupation or business licensed, and the location or place of business where said trade, calling, profession, occupation or business is carried on.

In no case shall any mistake of the City Clerk in stating the amount of a license prevent or prejudice the collection for the City of what shall be actually due from any one [fol. 4a] carrying on a trade, calling, profession, occupation or business, subject to license under this ordinance.

Section 3

All licenses required by this Ordinance shall be paid in advance, in legal currency of the United States of America, at the office of the City Clerk of the City of Casa Grande, Arizona.

A separate license must be obtained for each branch establishment or separate place of business in which any trade, calling, profession, occupation or business is carried on, and each license shall authorize the party obtaining it to carry on, pursue or conduct only that trade, calling, profession, occupation or business described in such license, and only at the location or place of business which is indicated thereby.

Section 4

Every person, firm, company or corporation having a license under the provisions of this ordinance, and carrying on a trade, calling, profession, occupation or business at a fixed place of business shall keep such license posted and exhibited, while in force, in some conspicuous part of

said place of business. Every person having such a license, and not having a fixed place of business shall carry such license with him at all times while carrying on the trade, calling, profession, occupation or business for which the same was granted. Every person, firm, company or corporation having a license under the provisions of this ordinance shall produce and exhibit the same, when applying for a renewal thereof, and whenever requested to do so by any police officer or by any other officer authorized to issue, inspect or collect licenses.

Section 5

The City Marshal shall have and exercise the power to make arrests for the violation of any of the provisions of this ordinance, and to enter free of charge at any time any place of business for which a license is required by this ordinance, and to demand the exhibition of such license for the current term, from any person engaged or employed in the transaction of any such business, and if such person shall then and there fail to exhibit such license, such person shall be liable to the penalty provided for the violation of this ordinance.

It is hereby the duty of the City Marshal, and so made by this ordinance, to cause complaints to be filed against all persons violating any of the provisions of this ordinance.

Any City Marshal failing or neglecting for more than thirty days to report any person, firm, company or corporation who or which is engaged in carrying on business without having paid the required license, shall be deemed guilty of neglect of duty and be either suspended from duty or dismissed from service in the discretion of the majority of the Common Council of the City of Casa Grande.

Section 6

The City Marshal, shall on or before the 10th and 20th of each and every month, pay over to the City Clerk all licenses collected by him during the previous days of such month, and report the total amount thereof at the next regular meeting of the Common Council.

Section 7

No license granted or issued under the provisions of this ordinance shall be in any manner assignable or transferable

to any other person, firm, company or corporation other than is therein mentioned or named, without permission from the Mayor or Council so to do.

Section 8

Any person wishing to sell, or dispose of for a consideration, within the City of Casa Grande, any farm or agricultural product, produced by himself, shall be exempted from paying any license tax hereunder for the privilege of [fol. 5] selling such products only, but before he shall be entitled to such exemption he shall make affidavit of the facts entitling him to such exemption and file the same with the City Clerk of the City of Casa Grande.

Section 9

Merchants defined: As used in this ordinance the term "Merchants" includes persons, firms, corporations, or companies, who at a fixed place sell any goods, wares, or merchandise on commission or otherwise, including milliners, tailors, machine shops, factories and all other occupations not specifically licensed in this ordinance.

Merchants shall pay a quarterly license fee in the sum of two and 50/100 Dollars ($2.50).

Section 10

Hotels are to be specifically licensed under this ordinance according to such classification as is hereinafter provided, to-wit: all Hotels having four or more rooms and auto courts having four or more cabins shall pay a quarterly license tax of $2.50.

Section 11

All businesses or occupations listed specifically hereunder shall pay such quarterly license tax as hereinafter is set forth, to-wit:

1 Abstract Companies	$2.50
2. Advertising	2.50
3. Automobile for hire	2.50
4. Auctioneers	2.50
5. Billiard Halls	2.50
6. Banks	5.00
7. Barber Shops	2.50

8. Bowling Alleys	2.50
9. Collection Agencies	2.50
10. Contractors	2.50
11. Skating Rinks	2.50
12. Circus (per performance)	25.00
13. Carnival (per day)	25.00
14. Express Company	2.50
15. Electric Light Companies	10.00
16. Fruit Stands (exclusive sale)	2.50
17. Gas Companies	10.00
18. Ice Dealers	10.00
19. Hospitals	2.50
20. Junk Dealers	2.50
21. Laundry	2.50
22. Photographing	2.50
23. Pawnbrokers	2.50
24. Lunch Counters and Cafes	2.50
25. Real Estates Agents and/or Insurance	2.50
26. Theatrical Houses	2.50
27. Telegraph	2.50
28. Telephone	10.00
29. Undertakers	2.50
30. Warehouses	2.50
31. Tent Shows (each—per day)	5.00
32. Dog and Pony Shows (per day)	5.00
33. All transient Shows (out of licensed theatre (per day)	5.00
34. News papers	2.50
35. Printing offices	2.50
36. Freight and Transfer lines	2.50
37. Attorneys at Law (each)	2.50
38. Dentists	2.50
39. Doctors	2.50
40. Chiropractoric doctors	2.50
41. Beauty Parlors	2.50
42. Dairies	10.00
43. Retail liquor dispensers	10.00
a. Retail wine and beer	10.00
44. Wholesale Firms	10.00
45. Lumber Yards	2.50
46. Creameries	2.50
46. Automobile service stations	2.50

Section 12

Peddlers, Transient Merchants; Venders. defined:

(A) "Transient Merchant" within the meaning of this ordinance shall include every person who, not for or in connection with a business at a fixed place within the City of Casa Grande, solicits orders from house to house for the future delivery of goods, or who shall deliver goods previously solicited by a solicitor, at retail, or an order for future delivery.

(B) As used in this ordinance, the term "peddlers" shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande, and who are [fols. 5a-6] not specifically licensed or permitted to sell any class of goods whatsoever.

(C) As used in this Ordinance, the term "Street Vendors" includes all persons engaged in selling in or upon the streets, alleys or vacant grounds within the City, any goods, wares, merchandise or articles, including photographs, and also includes all persons engaged in conducting upon the streets, alleys, or vacant grounds of the City any ring, knife or similar game, or any "faker" business, game or device.

All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of Twenty Five Dollars ($25.00), in advance.

Any person who does not have a licensed place of business in Casa Grande and who delivers any kind of merchandise or service to retailers in the City by truck or car shall pay a quarterly license fee of $10.00.

Section 13

The word "person" as used herein shall refer to any individual, business, profession, co-partnership, firm, association or corporation affected by the provisions hereof.

Section 14

If any word, sentence, phrase, clause, paragraph, section or subsection hereof shall by any court be held to be, for any reason, unlawful, illegal or unconstitutional, the said holding of said court shall not affect the rest of this ordinance, and the Common Council of the City of Casa Grande hereby

declares that it would pass and adopt this said ordinance in its legal form after the removal of said word, sentence, phrase, clause, paragraph, section or subsection so held to be unlawful, illegal or unconstitutional, and the remainder of this said ordinance is hereby ordained and adopted.

Section 15

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 16

That, owing to the present inadequate ordinances regulating the aforesaid businesses and callings by license and such regulation is urgently demanded for the best interest of the City of Casa Grande and its inhabitants, and it is necessary that this ordinance shall be effective and in operation at an early date, and it is therefore necessary for the preservation of the peace, health and safety of the City of Casa Grande, Arizona, that this ordinance shall become immediately operative and effective;

Now, therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its final passage and adoption and approval by the Mayor and the Common Council of the said City of Casa Grande, and after its posting as required by law.

Passed by the Common Council of the City of Casa Grande this 31st day of December, A. D., 1934.

Approved: Paul Stein, Mayor.
Attest:—A. L. Hoffman, City Clerk.
Posted this 31st day of December, 1934.
A. L. Hoffman, City Clerk.

[fols. 7-8] IN SUPERIOR COURT OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF PINAL

No. 1783 (Criminal)

STATE OF ARIZONA, Plaintiff,

v.

CHARLES JOBIN, Defendant

Statement of Evidence—Filed March 31, 1941

APPEARANCES:

For the State: Charles H. Reed, Esq., Special Prosecutor, Coolidge, Arizona.

For the Defendant: Charlie W. Clark, First Nat'l Bank Bldg., Phoenix, Arizona.

[fol. 9] Be It Known, that on the 15th day of November, 1940, there came on for jury trial in the Superior Court of Pinal County, Arizona, the cause of State of Arizona v. Charles Jobin, the State appearing by Chas. H. Reed, Esq., Special Prosecuting attorney, and the defendant in person and accompanied by counsel, Charlie W. Clark, Esq., and all parties announcing ready for trial, the empaneling of a jury is begun, and 18 jurors are drawn from the box by the Clerk, and duly sworn to answer questions touching their qualifications to serve in this cause, and being as shown by the list kept by the Clerk, and were examined in open court by Hon. Levi S. Udall, Judge of the Superior Court of Apache County, Arizona, presiding in place of Hon. E. W. McFarland, the regular judge of said court, and the following proceedings were had:

EXAMINATION OF JURY

The Court: Gentlemen of the jury, the matter about which you will now be interrogated as to your qualifications as jurors, is on a conviction under a complaint filed in Police Court in the City of Casa Grande in this County, which is now on appeal from that court. The defendant, who sits here at his counsel's right, is charged by an amended com-[fol. 10] plaint filed in that court on August 18, 1940, with having distributed certain literature—the complaint will

be read to you shortly—without first having procured a license from the City of Casa Grande, as required by the city ordinance. The court will ask you questions in regard to your qualifications.

I admonish you that both the court and counsel have a right to know the state of your minds with reference to this particular matter and if you will be free and raise your hands to questions propounded to you, it will facilitate matters.

First, are any of you jurors related in any degree by blood or marriage to the defendant? If so, please indicate it by raising your hand?

(No hands raised.)

The complaining witness in this case is Guy J. Baker; do any of you have any relationship of that kind with him? (No answers.)

Do any of you have any unfinished business relations with the attorneys in this case, either with the County Attorney's office or Mr. Clark of Phoenix, representing the defendant? (None.)

Are any of you gentlemen on the defendant's bond? (No answers.)

[fol. 11] Do any of you have any bias for or prejudice against the defendant? (None.)

May I see the hands of those of you who are personally acquainted with the defendant? (No hands raised.)

Have any of you heard the facts or purported facts in connection with this case? Have you read or heard of anything about the case or heard the matter discussed in any way? (No answers.)

I take it, then, none of you have talked to any witness or the defendant or any one claiming to know anything about this matter. If you have please raise your hand. (None raised.)

Have any of you formed or expressed any opinion as to the guilt or innocence of this defendant? (No answer.)

Now, gentlemen of the jury, in any criminal case the court wants to advise you the mere filing of a complaint or information does not raise any presumption of guilt. That is merely the method the defendant is brought before the bar of justice, and you should not consider the mere filing of a complaint any evidence against the defendant. You

must try the case solely on the evidence that is adduced before you. In other words, what I am getting at is this: [fol. 12] You have no right to try any case except on the sworn testimony on the witness stand and no right to take anything else into consideration. In any criminal case, by law you are made the sole judges of the facts, and it becomes the cuty of the court at the proper time to instruct you as to the law, and whether you agree with the instructions of the coourt gives you or not, it is your inviolate duty to follow those instructions. Is there any juror who would not abide by those instructions as to the law governing the case, if you are selected as a juror to try the case? (No answers.)

Now, gentlemen, in criminal cases, it is incumbent on the State of Arizona to prove the defendant is guilty beyond a reasonable doubt; it is not incumbent on the defendant to prove his innocence. It is incumbent on the State to prove beyond a reasonable doubt he is guilty. Is there any juror who would not require the State to prove it's case to you beyond a reasonable doubt as that term will be subsequently defined to you? If you may, indicate it. (No answer.)

Gentlemen, in every criminal case there is what is termed in law a legal presumption of innocence. In other words, this defendant stands before you now, and while he is [fol. 13] charged with an offense, he is presumed to be innocent, and it is your duty to give him the benefit of that presumption. Is there any juror who would not be willing to give to this defendant at the outset the benefit of the presumption of innocence to which he is entitled? (No answer.)

Probably the best test we can apply to determine whether a juror is qualified or disqualified is this: If one of you gentlemen were so unfortunate as to be brought before the bar of justice, charged with a crime or criminal off nse, would you be willing to be tried by twelve men now in your present frame of mind? If any of you would not be willing to be tried if the situation were reversed, you may indicate? (No indications.)

Are there any other questions you gentlemen (counsel) may have?

Mr. Reed: I would like to ask a few questions. Do any of you gentlemen belong to or subscribe to the belief or

teachings of the religious sect known as Jehovah's Witnesses? (None.)

If the evidence in this case should show the defendant is a minister and a preacher in the religious sect or faith which [fol. 14] has as one of it's principles that it doesn't believe in saluting the American flag or bearing arms——

Mr. Clark: I object to that, your honor on the ground it is prejudicial. It is not in the information.

The Court: Yes, that's right.

Mr. Reed: May I ask my question? If that should appear from the evidence would that affect any of you gentlemen.

Mr. Clark: I object on the same grounds, your Honor, and suggest that the nature of that last question and the previous one is a ground for a mistrial.

The Court: The objection to the question will be sustained, and the motion for mistrial will be denied.

Mr. Reed: No further questions.

Mr. Clark: Is there any of you gentlemen who doesn't believe in the liberty of religious freedom as guaranteed by the Constitution of the United States? (None.)

Are there any of you who believe that certain people or certain religions or forms of Christianity, because they may be contrary to your or my personal beliefs, should be suppressed? (None.)

[fol. 15] Are there any of you who would not give a Jehovah's Witness, a Jew or a Mohammedan the same fair and impartial trial? (None.) Pass the panel.

Thereupon (at 9:45 a. m.) the list of jurors was given to counsel to exercise their peremptory challenges.

The Court: You are now potential jurors in this case, and I admonish you not to discuss this case among yourselves or permit anyone else to discuss it in your presence. If they attempt to do so tell them you are prospective jurors in the case, and if they insist on doing so, report the matter to the Court for punishment. You may retire and be in your seats in 10 minutes.

Trial Jury

Thereupon, the parties having exercised their peremptory challenges, the following first twelve names on the list remaining unchallenged are selected as the jury to try the case, as follows:

Donald Moore	John A. Foreman
R. E. Foster	R. J. Edwards
Louis Cathemer	Henry V. Johnson
E. S. Allen	H. G. Hart
Tolbert Pruit	C. T. Wood
John L. Sims	Elmer Mathews

Thereupon the following proceedings were had:

[fol. 16] The Court: I am just informed by the Clerk that the record does not show the defendant has been arraigned in this court since the appeal. Do I understand, Mr. Clark, that your are willing to waive any informality in that?

PLEA OF NOT GUILTY

Mr. Clark: That's true, your Honor. We waive the reading of the amended complaint and enter a plea of not guilty.

The Court: The record may show that action. Mr. Clerk, you may call the names of the first 12 jurors unchallenged on the list. (Thereupon the above-named jurors were called, answered, and were duly sworn to try the cause.) The Clerk will read to you the amended complaint filed in the lower court in Casa Grande. (Amended complaint read by the Clerk.)

The Clerk (Mr. Marks): To this complaint the defendant has entered a plea of not-guilty.

Mr. Clark: At this time we ask that the rule be invoked.

(Thereupon, State's and defendant's witnesses were called and sworn, and after being duly admonished, permitted to retire from the court room, with the exception of Guy J. Baker, deputy Sheriff and complaining witness.)

Mr. Reed: I would like to make an opening statement, your honor.

[fol. 17] The Court: Very well.

OPENING STATEMENT

Mr. Reed: Gentlemen of the jury, this case as has been explained to you, is the trial of an appeal from the conviction or prosecution under the city of Casa Grande Ordinance No. 101, new series, which ordinance provides for the licensing of certain businesses, occupations, callings

and trades, and requires payment of license or a license fee before issuing such license. Among the occupations covered is that of peddler. The evidence in behalf of the State will show the defendant, Charles Jobin on or about the 15th of August of this year, came to Casa Grande. That he went from place to place and from residence to residence and offered for sale and sold certain books and pamphlets. That he did not then have, nor has he ever had a license as required by the ordinance for carrying on that business. That will be the evidence under which, when we submit it, we shall ask for a conviction.

The Court: Mr. Clark, do you care to make a statement now?

Mr. Clark: I will reserve my statement.

The Court: Very well, proceed.

Thereupon the following testimony of witnesses heretofore sworn was introduced:

[fol. 18] A. L. HOFFMAN, heretofore duly sworn, a witness for the State, testified as follows:

Mr. Reed: I would like to have Ordinance No. 101, new series, marked. (Same marked State Exhibit 1). I offer in evidence plaintiff's exhibit 1 marked for identification?

Mr. Clark: No objection.

The Court: It may be admitted. This is a true copy of the ordinance of the City of Casa Grande?

Mr. Reed: Yes, it is certified by Mr. Pace, the mayor, and the city Clerk, and it is offered in accordance with Sec. 4453 of the Code.

Examination by Mr. Reed:

Q. State your name.

A. A. L. Hoffman.

Q. Where do you live?

A. In Casa Grande, Arizona.

Q. What office or official position if any do you hold?

A. City Clerk, Treasurer and Superintendent of Streets.

Q. How long have you been City Clerk?

A. About 10 years.

Q. Do you know the defendant here?

[fol. 19] A. I have seen him.

Q. Will you state whether or not as a part of your official duties as Clerk of the City of Casa Grande you have in

your custody the records of licenses issued under city ordinance No. 101 New Series, of the City of Casa Grande?

A. I have.

Q. State whether or not the defendant Charles Jobin on the 15th day of August of this year had such a license?

Mr. Clark: We object, as the records of the City of Casa Grande would be the best evidence.

The Court: Overruled, he may answer.

A. He has not.

Q. Has he ever had such a license?

A. No, sir.

Mr. Reed: You may cross-examine.

Mr. Clark: No cross-examination.

Witness excused.

Connie Richerson, heretofore sworn, a witness for the State, testified as follows:

Examination by Mr. Reed:

Q. Your name is Connie Richerson?

[fol. 20] A. Yes, sir.

Q. You live in Casa Grande, do you not?

A. Yes.

Q. How long have you lived there?

A. All my life.

Q. How old are you?

A. Sixteen.

Q. Will you look at the defendant, please? When did you first see the defendant?

A. August 15th, I believe.

Q. Of this year?

A. Yes.

Q. Where did you see him?

A. In my home.

Q. In Casa Grande?

A. Yes, sir.

Q. What time of the day was it?

A. It was in the morning about 9 or 9:30.

Q. Just go ahead and in your own words relate what took place?

A. I was home with my little sister, and someone knocked at the door, and there was a man and woman out on the porch, and he asked could he come in and play a phonograph, and I told him no, so he stayed out on the porch and played about two minutes, and turned it off, and he [fol. 21] asked if I didn't want to buy a book called "Religion", the woman had it in her hands, and she pulled it out and I bought it, and then he gave me a pamphlet and said he had some other books that he was selling, I don't remember any of the names, but I didn't buy them.

Q. How much did you pay for the book?

A. A quarter.

(Book, marked Exhibit 2.)

Q. Handing you State's Exhibit 2 for identification, I will ask you to examine that, please. State whether or not that is the book you bought from this man?

A. It is.

Q. Did you buy anything else?

A. No, sir.

Q. Did he leave any other literature with you?

A. He played the phonograph, and left a little pamphlet.

Mr. Reed: We offer State's Exhibit 2.

Mr. Clark: No objection.

The Court: It may be admitted.

(Pamphlet marked St. Ex. 3.)

Q. Handing you State's Exhibit 3 for identification, I will ask you to examine that. State whether or not that is the pamphlet he left?

[fol. 22] A. It is.

Mr. Reed: We offer it in evidence.

Mr. Clark: No objection.

The Court: It may be admitted.

Q. Was anything said about donations or contributions by this man or that lady?

A. No, sir.

Q. Who told you the price of the book?

A. He did.

Q. What did he say it was?

A. A quarter.

Q. It cost you a quarter?
A. Yes, sir.

Mr. Reed: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Miss Richerson, what time of day did you say it was?
A. It was about 9:30 I believe, in the morning.
Q. Did he introduce himself in any way, tell you who he was, what he was doing, when you first came to the door?
A. No, he just asked to play the phonograph.
Q. Did he play the phonograph then?
A. Yes.
Q. Didn't he show you a card or a little open-faced pack-
[fol. 23] age?

("Testimonial" card of defendant marked Defendant's Exhibit A.)

Q. (continued). Examine defendant's exhibit A for identification.
A. He didn't show me that.
Q. You are positive he didn't show you this or anything like it?
A. No, he didn't show me that.
Q. He was on your porch when you went to the door?
A. Yes.
Q. And the lady was with him?
A. Yes.
Q. What was the first thing he said to you?
A. He said could be play the phonograph.
Q. Did he say "May I play the phonograph"?
A. He said—he had it there, and he asked if he could play it.
Q. Did he tell you the nature of the recording?
A. No, he did not.
Q. He just asked you if he could play it?
A. Yes.
Q. Didn't you think it a little unusual for anyone you never saw before to come up on your porch and play?
A. Yes, I did.
[fol. 24] Q. Didn't he tell you he was preaching the gospel?

A. Yes, but not at first.

Q. When did he tell you that?

A. During the course of the conversation.

Q. Was it after he played the phonograph?

A. Yes.

Q. And before he offered to sell that book to you?

A. Well, I don't remember when it was.

Q. Sometime during the conversation he told you he was an ordained minister preaching the gospel?

A. Yes, he said he was preaching.

Q. Did he quote you any scripture?

A. I don't believe he did. He did when he went to sell me the book.

Q. Some Bible quotations from the book?

A. I believe he did.

Q. Did he read you anything from this pamphlet that he gave you?

A. No, sir.

Q. But he did read you some Bible quotations during the conversation?

A. He quoted some, he didn't read them.

Q. As a matter of fact, who have you discussed this case with since this occurrence?

A. Just Mr. Reed.

[fol. 25] Q. Is he the only person you have discussed it with?

A. Yes, he is.

Q. You haven't talked to your father about it?

A. No, sir.

Q. You never did?

A. He and mother were at the trial.

Q. In your family at home have you not had any private discussions of it?

A. No.

Q. When your father got home and found you had a book there was no discussion?

A. He never knew I had it.

Q. He found it out before the trial at Casa Grande and you had some talk about it?

A. The only time he knew was after Mr. Reed asked me to come and he knew about the case.

Q. How did Mr. Reed find out you bought a book? Did you go to him and volunteer the information?

A. I don't remember.

Q. Did he come to you?

A. He came to the house.

Q. He said he knew you bought a book and wanted you to testify?

A. Yes.

[fol. 26] Q. No one told you how to testify?

A. No, sir.

Q. As a matter of fact, Miss Richerson, when Mr. Jobin walked up on your porch he presented that testimonial card marked Defendant's exhibit A, and told you he was preaching the good news of God's Kingdom, did he not?

Mr. Reed: Objected to as asked and answered.

The Court: Overruled.

A. No, he didn't show me that card at all.

Q. The first words he told you were his name, didn't he?

A. I don't believe so, I don't remember it all.

Q. You don't remember all that went on there, it has been so long ago?

A. Yes, it has been.

Q. And the next thing he told you after playing the phonograph was to show you this book and ask you if you wouldn't like to have one.

A. No, he asked me to buy one.

Q. Can you give me his exact words?

A. No, sir.

Q. Didn't he ask if you wanted to make a contribution to print more of these books?

A. No, he didn't ask me for a donation.

[fol. 27] Q. You haven't discussed the matter of the donation?

A. No, sir.

Q. But you are not sure of the rest of the conversation that you and I have just gone over?

A. I am sure about all between the very first one about the phonograph.

Q. You are sure he told you something about religion or Christianity?

A. He asked if he could play the phonograph, and I told him he could and he did, and I didn't understand anything about it until after he played the phonograph and

then he said a few words about it and asked if I didn't want to buy the book.

Mr. Clark: That's all.

By the Court:

Q. Did I understand you on direct examination to say that he asked permission to come into the house first?

A. Yes, sir.

Q. And you refused?

A. Yes, sir.

Q. He didn't persist and try to force his way into your home?

A. No, sir.

[fol. 28] Q. What was your reply when he asked to play the phonograph, did you object?

A. No, sir, I didn't object.

Q. That was done with your approval, or at least you did not object.

A. No, I didn't object.

Q. This little pamphlet, he gave you that?

A. Yes, sir.

Q. And that book, you purchased for the sum of 25 cents?

A. Yes, sir.

Q. Was his conduct offensive to you, the manner in which he conducted himself at the time?

A. No, sir, it was not.

The Court: That's all.

No further questions.

Witness excused.

Mrs. Hazel Irene Bonebrake, a witness for the State, heretofore duly sworn, testified as follows:

Examination by Mr. Reed:

Q. Your name, please.

A. Mrs. Hazel Irene Bonebrake.

Q. You live in Casa Grande?

A. Yes, sir.

[fol. 29] Q. How long have you lived at your present place of residence?

A. Two years.

Q. Will you look at the defendant, please? Have you ever seen him before?

A. Yes.

Q. When did you first see him?

A. At my front door in Casa Grande?

Q. What, about, was that?

A. The first part of August.

Q. Of this year?

A. Yes.

Q. He came to your home there in Casa Grande?

A. Yes.

Q. Go ahead and relate in your own words just what happened there at that time?

A. It was on Thursday morning and I was busy, and him and a lady came to the door and wanted to know if they could talk to me, and I told them I was very busy, and he said he had a phonograph and it wouldn't take long to play it, to play a record, and I told them I didn't want to buy anything, that I was very busy, but I let them in a few minutes and listened to the record, and after that they got up, and the lady had a bag and took out a book, and I said [fol. 30] "No, I don't want to buy anything, I told you that before you came in, and then he spoke up and told me the pamphlets were three for a dime, and I told him I didn't want to buy them, and then he had some little sheets, and asked if he left them, would I read them, and I told him he had better take them on, that somebody else would read them before I would, and so they went on.

Q. You didn't give them any money?

A. No, sir.

Q. And you received no books?

A. I received no book.

Q. He said the pamphlets were three for a dime?

A. Yes, sir.

Q. Did he give you any of those?

A. I don't know if those were what he was selling, but he left some literature there.

Q. Was anything mentioned about donations or contributions?

A. No, sir.

Mr. Reed: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Mrs. Bonebrake, when Mr. Jobin first came to your door, what was the first thing he said to you?

[fol. 31] A. Well, I don't know, I couldn't tell you just the first thing, but he wanted to play the record.

Q. Did he tell you what his name was when he first came to the door?

A. He might have, I didn't pay any attention, I wasn't interested to begin with.

Q. You wouldn't say he did not tell his name?

A. No, sir, I would not.

Q. Didn't he tell you what he was doing there at the door?

A. No, he wanted to play his record, but he didn't tell me what it consisted of or anything.

Q. Didn't tell you he was preaching the good news of God's Kingdom before he started?

A. No, sir, there wasn't any religion of any kind mentioned.

Q. Did he tell you he was an ordained minister of the gospel?

A. No, sir.

Q. He wanted to know if you would hear the phonograph record?

A. He wanted me to buy something.

Q. Was that the first thing?

A. No, I told him I didn't want to buy anything when I [fol. 32] first looked at him.

Q. Handing you defendant's exhibit A for identification, have you ever seen that before?

A. No, sir.

Q. Or anything that looked like that?

A. No, sir.

Q. As a matter of fact, wasn't the first thing Mr. Jobin said to you, "My name is Charles Jobin; I am preaching the good news of God's Kingdom;" and then handed you that card for his identification. That's right, isn't it?

A. No, he did not.

Q. You say then he told you nothing of what he was doing, his work, during the entire conversation?

A. Not until I listened to the phonograph.

Q. Did he tell you after that?

A. Well, then, of course, I knew what he was doing. I knew it was some religious organization.

Q. Didn't he say "I would like to leave some of our literature"?

A. No, the lady took the book out——

Q. Didn't he say that first?

A. No, he didn't.

[fol. 33] Q. The lady didn't wait for him?

A. I said I didn't want to buy it. I said I didn't want anything.

Q. Did you say "I don't have time to read this:"?

A. No.

Q. You didn't give him time to sell anything?

A. He tried to sell the pamphlet after I said I didn't want the book.

Q. And you told him you didn't want to buy them and wouldn't read them.

A. That's right.

Q. Didn't he say: "I will be glad to give them to you if you will read them"?

A. When he got ready to leave, he——

Q. Are you sure he didn't say that?

A. Yes, I am sure he did not.

Q. But he did give you a little piece of paper?

A. Yes, two little sheets, he laid them on the table that was there.

Q. And you said then "You had better take them some place else"?

A. Yes.

Mr. Clark: That's all.

No further questions.

Witness excused.

[fol. 34] CHARLES RICHARDSON, a witness for the State, being first duly sworn, testified as follows:

Examination.

By Mr. Reed:

Q. State your name, please.

A. C. I. Richardson.

Q. Where do you live?
A. In Casa Grande.
Q. How long have you lived there?
A. Since '29.
Q. What business or occupation do you follow?
A. Laundry and dry cleaning.
Q. Were you in that business during the month of August of this year?
A. Yes.
Q. Have you ever seen this defendant sitting here by his counsel, before?
A. Yes.
Q. When did you see him?
A. I saw him, he came over to the laundry during the middle of August one day.
Q. August of this year?
A. Yes.
Q. Go ahead and tell all that happened at that time, in your own words.
A. He came over to the laundry and came in and spoke [fol. 35] to my bookkeeper, I didn't happen to be in the front at the time, and she was busy and she wouldn't talk to him, from what she told me, and went to looking for me, and while they were looking for me, I saw the man up there and saw his brief case and presumed he was a salesman looking for me in connection with the laundry business, so I went up to see what the man wanted, and as soon as I came up, as I remember it, he introduced himself by letting me know he was representing a religious order with the Jehovah Witnesses, and would like to interest me in some of their work. I presumed he had something to sell, so I asked him what he had to sell, as long at it wasn't directly in my line, if I could use it I would buy it and let him go on his way, and he said, "I don't have anything to sell, but I have some books on religion, and if you will donate 25 cents to the cause, you may have one of these books," and I believe at that time he showed me one, or maybe two or three different kinds of books, and so we talked a few minutes or longer, I don't remember just what about, but along in the conversation we were talking about religion, I was kind of interested in [fol. 36] what the man might be doing out on the road that way, and I remember he made the remark concerning religion, I presume other-*sic* than his own, when he was talking about these books, and I asked him how he could

produce them to sell so cheaply, and he said they had a plant of their own, that they were not endeavoring to make a great profit, but were trying to put their religion out, that was the main idea, and also he made the remark when I told him I would kind of like to donate most of my money to local bodies, if I should choose to do so, and he told me that, in his opinion, they were—what was the word he used —rackets; that all the regular religions as a general rule was a racket, and I took a little offense at that because I am in favor of religions as a whole. I think it is a very good thing, so I told him I didn't exactly agree with his views in that respect, that I thought religions as a whole a good thing to uphold, and we talked about thoughts and things in life and we let it go at that, and he went ahead and showed me his other books to see if I wanted any, and I picked out [fol. 37] one called "Religion" or "Religions" and when I took this book, he said, "Now these other books are good, and for 75 cents you can have three of them" and I told him, No, I didn't want but the one, "I will take it", so he said, "Here, I have another pamphlet that I would like to have you take. It won't cost you anything but it is something no doubt very interesting" or words to that effect, so I took that with the book and gave him the money and he went on west towards Mr. Sells' place.

(Book "Religion" marked State's Exhibit 4.)

Q. Handing you State's exhibit 4 for identification. I ask you to examine that. Is that the book you bought?

A. That one or one identical with it. It is the same color and the same appearance.

Mr. Reed: We offer it in evidence.
Mr. Clark: No objection.
The Court: It may be admitted.

(Pamphlet marked State's Ex. 5.)

Mr. Reed: We offer this in evidence.
Mr. Clark: No objection.
The Court: It may be admitted.

Q. Will you examine State's Ex. 5.

[fol. 38] A. I wouldn't know anything about the inside, because before I looked any further than the cover, Mr. Baker took it from me.

Q. Well, look at the cover.

A. This is the book or pamphlet the same as I had.

Mr. Reed: We offer it in evidence.

Mr. Clark: No objection.

The Court: It has already been admitted.

Q. And you gave him 25 cents?

A. Yes.

Q. And he said for 75 cents you could have three of the books?

A. That's correct.

Mr. Reed: You may cross examine.

Cross-examination.

By Mr. Clark:

Q. Mr. Richardson, you stated under direct examination that the defendant condemned religion. Is that right, or did he state various religious sects that he did not like?

A. No, he said they were rackets, they were all a racket.

Q. Did he tell you what he thought the difference was between religion and creeds?

A. Not that I remember of.

Q. He might have, isn't that so?

[fol. 39] A. I didn't have any occasion to remember it until I was called as a witness, and I wouldn't remember anything about it until Mr. Baker came over and brought that book over.

Q. Then you probably don't remember the conversation in great detail.

A. Parts of it that I told you was what I remembered.

Q. He might have said other things?

A. Unless they were recalled to me, I wouldn't remember them.

Q. He told you the contributions went to publish more of this same kind of literature.

A. I might have inferred that, but he didn't say that.

Q. You wouldn't say he did or did not, would you?

A. No, I would not.

Mr. Clark: That's all, your Honor.

By the Court:

Q. Let me get this straight. Did you understand that you bought this book for 25 cents, or were asked for a donation and he gave you the book?

A. After we talked for a while, he had more than one book, different kinds, all about the same size but with different headings, and he asked me what book I would choose, and I [fol. 40] picked out this one here, and he told me at that time that for 75 cents I could have three of the books, and I told him, no, I didn't want but the one. I said that I would buy one, so I took the book and gave him the money.

Q. Was that transaction as you understood it a purchase or were you making a donation to the cause?

A. I didn't decide that, but I would have.

Q. I am just asking your understanding.

A. The understanding was if I gave him 25 cents I would get a book, and I got the book, and gave him 25 cents and I understood the book was mine after I gave him the 25 cents.

The Court: That's all. Any further questions?

Mr. Reed and Mr. Clark: No questions.

Witness excused.

Guy J. Baker, a witness for the State, heretofore sworn, testified as follows:

Examination.

By Mr. Reed:

Q. Your name is Guy J. Baker?

A. Yes, sir.

Q. What official position do you hold in the city of Casa [fol. 41] Grande?

A. Chief of Police and City Marshal.

Q. How long have you held that position?

A. Seven years and three months.

Q. Are you acquainted with the defendant?

A. I met him last August.

Q. When did you first meet him or see him?

A. August 15th, 1940.

Q. Where?

A. At the home of Ham Stevens.

Q. Was anyone else there at that time?

A. Mr. Stevens was there, and a party with me, by the name of George Branscomb.

Q. What happened there and took place?

A. About ten minutes before I went there Mr. Bonebrake and Mr. Bob Hendricks looked me up down town, and they told me——

Mr. Clark: Object to what they told him.

Q. Don't tell what they said.

A. They reported a party was selling books——

Mr. Clark: Object to that answer, and move that it be stricken:

The Court: Motion *to* denied.

A. And requested that I go and investigate. I took Mr. Branscomb with me and went up and located defendant, [fol. 42] Charles Jobin, and I told him I would like to have a conversation with him. I asked him first what he was doing, and he said he was selling religious tracts and books and spreading the gospel of the kingdom. I told the defendant that according to the city ordinances he would have first to get a license before he could sell any books or pamphlets. He told me "I recognize no authority but Jehovah". I said, "I am sorry, Mr. Jobin, but you can't sell books in town without a license. However, if you would like to leave now and not sell any more, we will forget all about it." He said "The only way I will stop selling books is to be arrested and put in jail," which was immediately done.

Mr. Reed: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Now, Mr. Baker, handing you defendant's Exhibit A for identification, did you ever see that before?

A. I saw it down in the courtroom in Casa Grande.

Q. That was the first time you saw it?

A. He showed me one that day.

Q. And told you that was his credentials and identified him?

[fol. 43] A. Partially identified him.

Q. And that was the first thing he showed you.

A. No, sir, it was not.

Q. You have been chief of police seven and one half years?

A. Seven years and two or three months.

Q. Before that you were City Fire Marshal?

A. No, sir.

Q. What did you do before that?

A. A grease-hound, running a truck and running a garage.

Q. Is that the only city or county position you ever held?

A. Un-huh.

Q. You have to arrest somebody sometime to keep your job?

A. I beg your pardon.

Q. So the City Fathers will be satisfied with your work.

A. No, sir, they are much more satisfied when I don't have to make an arrest.

Q. And Mr. Baker, the first thing Jobin told you, you say, is that he said I am selling religious books?

A. That's right.

Q. Isn't it a fact that the first thing he said was, "'I am [fol. 44] preaching the gospel''?

A. As I testified before, I asked him what he was doing, and his first reply was, "I am selling religious books and preaching the gospel of the kingdom."

Q. That was after you told him you would like to have a little conversation with him?

A. That's right.

Q. Didn't you just say a little while ago "I located Charles Jobin and told him I would like to have a little conversation with you" and he answered, and said he was selling books and pamphlets and was preaching the gospel of the kingdom?

A. Sure, that's what he told me.

Mr. Clark: That's all.

Mr. Reed: That's all. No just a minute.

Re-direct examination.

By Mr. Reed:

Q. State whether or not the defendant Charles Jobin had an established place of business in the city of Casa Grande any time this year?

A. No, to my knowledge.

Q. He never had one?

A. No, sir.

Q. The place you saw him was in the city limits?

A. Yes, that's right.

[fol. 45] Q. Do you know where Connie Richerson lives?
A. Yes.
Q. Is that in the city limits?
A. It is.
Q. And you know where Mrs. Bonebrake lives?
A. Yes. She lives inside the city limits.
Q. And where is Mr. Richardson's laundry?
A. Inside the city limits.

Mr. Reed: That's all.
Mr. Clark: No further questions.
Mr. Reed: The State rests.

(Recess taken, 10:50 a. m. until 11:05 a. m. During which time the jury, after being duly admonished by the court, were permitted to retire. At 11:05 a. m., all present as before, including the jury, the trial is resumed.)

CHARLES JOBIN the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Clark:

Q. Your name is Charles Jobin and you are the defendant in this case?
A. Yes.
Q. What is your occupation, profession or calling?
A. Ordained minister of the gospel and commanded by [fol. 46] Jehovah God to preach the good news as commanded by Him and his work.
Q. On the 15th of August, 1940, where were you?
A. In the city of Casa Grande.
Q. What were you doing there?
A. Publishing the good news as commanded by the Lord.
Q. What methods did you use?
A. With phonograph which I did carry that about, and play a short recording Bible truth to the people, and also by word of mouth, and also books from which was witnessed further the truth of the Bible.
Q. By whom are the books printed?
A. By the Watchtower Bible and Truth Society, which is a charitable organization duly commissioned by the Lord to preach and publish the good news.

Q. Are you a member of that society?
A. I represent the Watchtower Bible and Truth Society.
Q. You say you had a phonograph that morning?
A. Very true.
Q, What became of it?
A. The phonograph was taken away from me when Mr. Baker arrest me he take away my phonograph and my book [fol. 47] bag and also my testimony card.
Q. Have you seen that phonograph or book bag from that day to this?
A. I saw this morning Mr. Baker had in his hand when he come up here.
Q. But——

Mr. Clark: May it please the Court, I ask the State to produce them.
The Court: They may be produced.

Q. Handing you defendant's exhibit A, have you seen that before?
A. This is my testimony card.
Q. By whom was that given to you?
A. The testimony card is sent to us by the Society to identify every one of us as representing the same.

Mr. Clark: We offer it in evidence.
Mr. Reed: No objection.
The Court: It may be admitted.

(Phonograph brought in and marked Defendant's Exhibit B.)

Q. Handing you defendant's exhibit B for identification, will you examine that?
A. Kindly can I ask the Court if I can open it?

The Court: Certainly, but don't play it here.

[fol. 48] A. This is the phonograph I was using that morning of my arrest.
Q. Is the record the same one you were playing that morning?
A. It is the same and I would kindly ask the Court make it clear grant me the favor to play it right now here.
Q. Not at this time. The record is the same one you played for Connie Richerson?
A. Yes.

Q. And to Mrs. Bonebrake.

A. The same one I was using that morning.

Q. Did you play that to Mr. Richardson?

A. I played it in every home in which they allow me to play it and she allow me to play it.

Q. Did you play it at Mrs. Bonebrake's. That's the name of the party who testified?

A. The names of the party I met so many it would be hard to remember, but if she is the one, surely I played it.

Mr. Clark: We offer it in evidence.

Mr. Reed: No objection.

The Court: It may be admitted.

Mr. Clark: And we will ask the Court to allow this record to be played?

The Court: For what purpose?

[fol. 49] Mr. Clark: For the purpose of proving what this man did. They have testified he played the record for them and we ask a demonstration be made for the purpose of showing what he did.

The Court: What is the attitude of the prosecution?

Mr. Reed: I really think it is purely immaterial, but we have no objection. He is charged with selling books, and what he played doesn't have anything to do with it.

The Court: I can't see what probative value playing it would have. The witnesses for the State have testified the defendant came to their house and played—house or place of business, and that he did, when permitted to do so, play this record, and now the defendant himself admits it. As to the contents of that record, that could have no bearing on the issues here. He is charged, not with playing a phonograph record or any other disturbance of the peace, but of selling books and literature without a license, so that your offer, Mr. Clark, to play the record, will be denied.

Mr. Clark: Yes, your Honor, he is not charged with play-[fol. 50] ing this record, but the playing of it may shed some light on what he was doing. I will withdraw the offer at this time and renew it later.

Q. Do you remember Connie Richerson, have you any independent recollection of her?

A. I do remember the laundry man.

The Court: The question is, whether you remember the young lady, the second witness.

A. Yes, I remember her.

Q. When you called on her, what did you say?

A. I say, I kindly ask her if she would like to hear a recording, which was Bible truth. She said, "I am busy". I said, "This will take only four minutes of your time and will enable something of Jehovah God's righteous kingdom" and she said "Come on in" and then I played the recording.

Q. Then when did you show her these books or pamphlets?

A. In fact, my wife was with me and she is the one, she showed the books to them.

Q. Did you show her this book?

A. My wife did, because we were working, the two together.

Q. What did you tell her with reference to the book and what you were doing?

[fol. 51] A. We used the same testimony books, our testimony is truth and those books, every one, has over a thousand Bible quotations explaining exactly what everyone of us need to know and I told her if she want one book to enable the work, she could have the book on a small contribution of 25 cents, but if people are too poor, it may be left at their home entirely free of charge.

Q. With reference to this pamphlet, Exhibit 5, what did you tell her with reference to that?

A. I tell her that anyone that want to contribute 25 cents for one book, the little pamphlet will be left without. And in case she don't feel like taking a copy of the big book and is too poor, it be left entirely free of charge provided she is willing to read it.

Q. When you called on Mrs. Bonebrake, the other lady who testified here this morning, what did you tell her?

A. We generally use the same introduction every place, because we make it very brief. I told her the recording, if she like to hear, would not cost her a penny.

Q. Did you show her your testimonial card, this one marked Exhibit A for identification?

A. Without a doubt the card was showed to her.

[fol. 52] Q. You heard Mr. Richardson, the laundryman, testify this morning? When you went to his place of business what did you say to him?

A. I call his attention I was representing the Watchtower Bible and Truth Society; that I am one of Jehovah's Witnesses, and for him please read the card carefully which I showed to him, which was my testimony card.

Q. Did you have any conversation about leaving any books or pamphlets with him?

A. I had quite a little talk. I recall very plain he told me himself he was not affiliated with any religious organization. He said I like to contribute, I like to help them along, buf I told him, "This is not a religious organization; this is entirely a Christian organization." I showed him the book; I opened one and let him read the statement inside and I told him if he felt like contributing a quarter to help the work along the book would be left with him.

Q. Now, Mr. Jobin, in Casa Grande have you ever offered to sell any of these books?

A. At no time.

Q. Why did you go from door to door distributing these books and playing this phonograph?

[fol. 53] A. The spirit of the Lord is upon me and the Lord anoint me to preach. To bind the broken-hearted and to proclaim liberty unto the captive. I am consecrated to obey God's will and to set forth his commandments as set forth in the Scripture.

Q. Do you believe that any consequences will be brought on you in case you do not obey the Lord's will?

Mr. Reed: We object to his beliefs.

The Court: Overruled.

A. Yes, in Acts 3; 23; it reads that every soul that will not hearken shall be destroyed from among the people.

Q. Is this your method of worshiping Jehovah God?

A. Because His disciples went from place to place by the Lord Jesus' proclamation and proclaim the good news, so I go from place to place as commanded by the Lord.

Q. How long have you been engaged in this work?

A. Approximately 10 years.

Mr. Clark: You may cross-examine.

Cross-examination.

By Mr. Reed:

Q. When you arrived in Casa Grande to carry out your work you have just testified to, did you go to the city offi-
[fol. 54] cers and make application in accordance with their laws?

A. No, sir.

Q. Why didn't you?

A. Because I was commanded by Jehovah God to preach the good news and the constitution of the Lamb grant me this privilege, and the law of Jehovah God, and also I consider it my duty is that I obey.

Q. You hold that you are not amenable to laws made by the city of Casa Grande?

A. I am obeying the constitution of the Lamb.

Q. Answer my question.

A. I cannot ask for any permit to do a thing Jehovah God commands us to do.

Q. And that includes complying with the local rules and regulations of constituted authority?

A. I will answer this way. I am a witness in this court and I did not break no laws because the constitution guarantees me the right to publish the good news of the kingdom.

Q. But you don't feel that you have to comply with local ordinances before you publish the good news.

A. No.

Q. And that's the reason you refused to take out a license?

[fol. 55] A. I did not refuse to take out a license because I was carrying on the Lord's work faithfully.

Q. But you did refuse when Mr. Baker talked to you.

A. I never, because I will not take any at no time. I never refuse it at no time.

Q. But you won't take any out?

A. That's right.

Q. You say when you called on Connie Richerson, did she ask you into her house?

A. I brought attention to her mind that I had a recording and was going to play it, and she ask me to come in, which I did, and set the phonograph on the table with her permission and then played it to her.

Q. Did you sit down there?

A. I don't think so, I don't remember, because I know the record lasts only four and one half minutes and our time is very precious to call it to as many souls as we can, because our duty is to warn people of approaching disaster.

Q. I will ask you to please answer my questions; this is no time for a sermon. Did your wife sit down?

A. I don't recall.

[fol. 56] Q. How about the girl?

A. I don't recall.

Q. You don't recall—you do recall, however, that she called you in and you set the phonograph on the table?

A. That's what I recall.

Q. You say if people were unable to pay you left them free?

A. Left the pamphlet entirely free of charge and if any people too poor to contribute for the big books and will read it carefully, we will leave it at their home.

Q. Which is the one you left free?

A. The pamphlets if they are willing to read it. If willing to read it, the big book only in the case they are too poor and cannot contribute for it, and will study it carefully we also leave that.

Q. Did you leave any of these big books without anybody paying you 25 cents?

A. I don't remember, but I have left them in Pinal County.

Q. As a matter of fact, you didn't leave any in Casa Grande unless you got the 25 cents.

A. I don't recall, but I left a good many pamphlets.

[fol. 57] Q. This is this little pamphlet?

A. Yes.

Mr. Reed: That's all.

Re-direct examination.

By Mr. Clark:

Q. The money you received from contributions for these books and pamphlets—what becomes of it?

Mr. Reed: Objected to, it makes no difference.

The Court: What is the purpose of this?

Mr. Clark: If this is religious, and the contribution is not kept for himself, he is not in business peddling.

Mr. Reed: If the Court would like to hear some law on that proposition, I have it.

Mr. Clark: Question withdrawn.

Q. How many books and pamphlets have you given away free in the last six months?

A. It would be rather hard to answer, but we are sure we give hundreds away.

Q. How many approximately here in Pinal County?

A. I have not been in Pinal County for six months but I have been in this county and also in Phoenix since the last three months, but I know for a certainty we have given over [fol. 58] 200 booklets away since that time without receiving any contribution.

Mr. Clark: That's all.

Recross-examination.

By Mr. Reed:

Q. By booklets you mean these pamphlets?

A. Yes, and also quite a few big books, people too poor and who show a good spirit, we leave it at their home.

Q. Do you remember any of those people?

A. Yes.

Q. Who are they?

A. We don't take the name down, but if it please the court to locate their place, I would be glad to do so. We don't ask the name of people, we are preaching the good news and it is our duty to go from place to place and warn people of the approaching disaster.

Q. Can you tell me where any one lives where you have left at least one big book without charge?

A. Yes, I could show you the place.

Q. Where is it?

A. Right in Coolidge.

Q. Where?

A. In Coolidge.

Q. Where in Coolidge?

[fol. 59] A. I know I left one there, I think a party told me — was sick for six months, he has quite a large family.

Q. Answer the question.

A. I am just coming down to it. I don't recall the name of the street, I can take you there and be glad to and then we can get his name.

Q. You knew your trial was coming up since the 22nd day of August, did you not?

A. I know the case was pending, and going to be appealed, but I did not know anything of it, the date, until two days ago.

Q. You have made absolutely no effort to locate any person to whom you have given one of these books?

A. I could locate others I have given away before this.

Q. You haven't done the preparing for this trial?
A. Emphatically no.

Mr. Reed. That's all.
Mr. Clark: That's all.

Witness excused.

Mr. Clark: We rest.
Mr. Reed: No rebuttal, your Honor.

(Jury admonished, and excused until 1:30 p. m. or subject to call of the court.)

[fol. 60] MOTION FOR DIRECTED VERDICT

Mr. Clark: (After jury retires). May it please the court, at this time the defendant moves the court to direct the jury to return a verdict of not guilty upon the grounds that the ordinance upon which this action is based is void. And, second, that the ordinance is unconstitutional in contravention with the 14th amendment to the Constitution of the United States; and, third, it does not apply to the defendant.

(Whereupon the matter was argued to the court by both counsel, and at 3 o'clock p. m., in open court, all parties being present as before, including the jury, the trial was resumed and the following proceedings were had:)

The Court: Let the record show all jurors present. Gentlemen, we will proceed. The motion made by the defendant before the noon recess is denied. I believe you stated, Mr. Reed, there was no rebuttal?

Mr. Reed: That's correct, your honor.

The Court: Then the case is completed as far as the evidence is concerned. You may proceed to the argument.

Mr. Reed: The State waives opening argument.

(Whereupon Mr. Clark argued and was answered by [fol. 61] Mr. Reed.)

The Court: May I ask counsel if you have any special instructions that you desire to submit to the Court.

Mr. Reed: We have none, your Honor.

Mr. Clark: The defendant has none, your Honor.

The Court: Very well. Gentlemen of the jury, you have heard the evidence and the argument of counsel and it now becomes the duty of the court to instruct you as to the law governing the case. I wish you would follow these instructions carefully. The information, or I should say, the amended complaint in this case, on which the defendant is now on trial, reads as follows: I will re-read the amended complaint. You will keep in mind that this case is here on appeal from police court in the city of Casa Grande. No information was filed; that is not necessary, as it is under trial from a complaint in the police court, and the amended complaint charges the defendant:

(* * * reads amended complaint on file.)

Now the ordinance in question under which this defendant is being prosecuted for an alleged violation thereof, reads, in part, as

[fol. 62] (* * * reads from ordinance introduced in evidence * * *)

Under Section 12 of the ordinance it defines there what constitutes a transient merchant, peddler and vender, which I have just read you.

So if you gentlemen will keep in mind throughout your consideration of this case that this defendant is accused of offering for sale and selling and soliciting the sale of these pamphlets, books and publications, without first having secured a license from the City of Casa Grande. In other words, gentlemen, this ordinance, as amended, is for an occupational tax, designed primarily for revenue purposes.

The information or complaint in any case is a mere formal accusation, and is not to be regarded as any evidence of the defendant's guilt.

The Court has instruc*ged* you before you can find him guilty, you must find that he is guilty as charged beyond a reasonable doubt.

A reasonable doubt is such a doubt as you may entertain as reasonable men after a thorough consideration of the evidence. It is not an imaginary or capricious doubt, but must be a doubt entertained by you as reasonable and prudent men and based or arising from the evidence or the want

[fol. 63] of evidence. If you find such a doubt exists in your minds after all the evidence is before you, then it is your duty to resolve that doubt in favor of the defendant and acquit him. It is not a mere conjecture or surmise, but a serious and substantial and well-founded doubt arising from the evidence or want of evidence, which has reason for its basis. If you feel uncertain of the defendant's guilt and believe you are acting in a reasonable manner and as a reasonable man in a like situation would act, that is a reasonable doubt to which the defendant is entitled to have the benefit.

You, gentlemen of the jury, are made by law the sole judges of the evidence in this case. You are also the sole judges of the credibility of the witnesses in the case. In determining the credibility of the witness or witnesses you have a right to consider their manner and demeanor on the stand, their means of knowledge of the things about which they have testified, their motive or interest in the case, if such is shown, the probability or improbability of their several statements considered in connection with the other evidence in the case.

[fol. 64] If you believe that any witness has wilfully sworn falsely in the case, you have the right to wholly disregard his testimony, except insofar as it may be corroborated by other evidence—by other credible evidence in the case which you believe to be true.

The defendant has offered himself as a witness in his own behalf. He has that right and you should consider his testimony the same as any other witness in the case, weighing and judging his credibility the same as that of any other witness in the case.

In every crime or public offense, there must exist not only the act committed, but also criminal intent, and this intent may be proven by the circumstances connected with the offense and need not be proven by direct and positive testimony. The actual consequences and the natural consequences of an act in a person of sound mind are presumed to be intended. Intent may be inferred from the evidence and the facts proved to your satisfaction and beyond a reasonable doubt if its existence, as the term reasonable doubt has been defined to you in these instructions.

In order to convict the defendant, it is incumbent upon [fol. 65] the State to convince you beyond a reasonable

doubt of the truth of every material allegation of the information, or in this case, the amended complaint under which the defendant is charged. Nothing is to be presumed or taken by implication. The law raises no presumption against the defendant, and he is presumed to be innocent until he is proven guilty beyond a reasonable doubt, as I have already defined that term to you.

Now, gentlemen, the nature of this offense is such that the court feels he should instruct you a little more fully with reference to the law governing the matter of free speech and freedom of the press. "The court instructs you as a matter of law that this defendant had a perfect right in the city of Casa Grande or any other place in the State of Arizona to, as long as he did not disturb the peace or trespass, give his views on religious matters. He had a perfect right to distribute free any pamphlets, books or literature without obtaining from the city of Casa Grande a permit or license to distribute them. The court wants to remind you that in this matter the defendant is accused of having sold these pamphlets, books, etc., without procuring a license [fol. 66] or permit so to do. Now if you find from the evidence that he did not sell these books or pamphlets, you should promptly acquit him. On the other hand, if you find he did sell these books and pamphlets without having procured a license so to do, then you should find the defendant guilty."

The court will submit to you two forms of verdict. The first, omitting the title of court and cause, reads as follows:

"We, the jury duly empaneled and sworn in the above entitled cause, upon our oaths do find the defendant, Charles Jobin, not guilty."

The other,

"We, the jury duly empaneled and sworn in the above entitled cause, upon our oaths do find the defendant, Charles Jobin, guilty as charged in the complaint."

Now, gentlemen, when you retire to the jury room for the consideration of your verdict, you will first appoint one of your number as foreman. Your verdict in this case as in all criminal cases must be unanimous, and when you arrive at a verdict, have your foreman sign it and return it into open court, where it will be submitted. You will be placed in charge of the bailiff, of course, and kept together.

(Thereupon, at 3:25 p. m. the jury retired to deliberate [fol. 67] upon their verdict, and at 4:00 p. m. returned into open court, all being present the following verdict, omitting title of court and cause:)

The following proceedings were had:

The Court: Have you agreed upon a verdict Gentlemen?
Foreman: We have, your Honor.
The Court: You are the foreman?
Foreman: I am.
The Court: Will you state whether you find the defendant guilty or not.
Foreman: We find the defendant guilty.
The Court: Do you gentlemen (counsel) desire to poll the jury?
Mr. Clark: No, your Honor.
The Court: Mr. Clerk, you may file and record the verdict. Gentlemen of the jury, thanks for your consideration of this case. You are released until tomorrow morning at 9 o'clock. Now, Mr. Clark, you indicated you wanted the defendant to give bond?
Mr. Clark: Yes, I do, your Honor. I have to be in Tucson tomorrow. Would it be possible for him to be released in my custody.
The Court: Where is his address.
The Defendant: In Coolidge.
[fol. 68] Mr. Clark: I don't think he would leave, if there is no objection to it.
The Court: I think it could be done. Mr. Jobin, in——
Mr. Clark: Just a minute, your Honor. (Confers with defendant.) I think the Court could impose sentence at this time. We are ready.
The Court: Very well, stand up, Mr. Jobin. Mr. Jobin, in this case you have been charged with a misdemeanor of selling books and pamphlets without procuring a license so to do, from the city of Casa Grande. A jury having returned a verdict against you, and you having announced ready for sentence, have you anything to say or cause to show the Court why sentence should not now be passed?

(Defendant: No answer.)

Mr. Clark: Nothing, your honor.

JUDGMENT AND SENTENCE

The Court: Very well, it is the judgment of this court that you are guilty, and as a punishment, the Court fines you the sum of $50.00, and if the same is not paid, it shall be served out at the rate of $1.00 per day. In other words, 50 days in jail or payment of a $50.00 fine. The court will permit you to go in the custody of your attorney until such [fol. 69] time as your notice of appeal and bond can be procured. In the meantime I will fix the appeal bond in the sum of $300.00.

(4:05 p. m.)

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 70] IN SUPERIOR COURT OF PINAL COUNTY

ORDER—November 15, 1940

In the Matter of conferring jurisdiction:

It is ordered that Hon. Levi S. Udall, Judge of the Superior Court of Apache County, Arizona, be and he hereby is given general jurisdiction in this court on November 15th and 16th, 1940, in any and all matters regularly coming before said court for consideration, trial or determination, and that said jurisdiction continue until all of such matters are fully and finally adjudicated and determined.

E. W. McFarland, Judge.

IN SUPERIOR COURT OF PINAL COUNTY

Present: Hon. Levi S. Udall, Judge, presiding.

No. 1783. 9:30 A. M.

STATE OF ARIZONA

vs.

CHARLES JOBIN

Minute Entries of Trial

This cause came on for trial at this time, the State appearing by Chas. H. Reed, Casa Grande City Attorney, and the defendant appearing in person and by counsel, Charlie W. Clark, Esq., and the following jurors are called in the box, 18 in number: Donald Moore, Chas. R. Perkins, F. E. Foster, Louis Cathemer, Sam Taylor, E. S. Allen, Tolbert Pruett, John L. Sims, Chas. H. Treadway, John A. Foreman, J. F. Aldrich, R. J. Edwards, Ernest Ramirez, Henry V. Johnson, H. G. Hart, C. T. Wood, Elmer Mathews, Wesley Heiman, and are duly sworn and examined in open court, and found to be qualified, and the list is given to counsel to exercise their peremptory challenges;

This being an appeal from a misdemeanor in the lower court, and it appearing that the defendant has not been arraigned in this court, it is stipulated in open court by all parties that arraignment may be had at this time, and the defendant, being formally arraigned in open court, for a plea says that he is not guilty of the charge contained in the amended complaint, which plea is received and entered, and the trial proceeds.

[fol. 71] The parties now having exercised their peremptory challenges, the first 12 names on the list remaining unchallenged, viz: Donald Moore, F. E. Foster, Louis Cathemer, E. S. Allen, Tolbert Pruett, John L. Sims, John A. Foreman, R. J. Edwards, Henry V. Johnson, H. G. Hart, C. T. Wood, Elmer Mathews, are selected as the jury to try the cause, and are duly sworn as such. Opening statement is made by Chas. H. Reed, and the following witnesses were sworn and placed under the rule: For the State, Guy Baker, Al Hoffman, Chas. Richardson, Connie Richardson and Mrs. Hazel Irene Bonebrake; and the defendant, Chas. Jobin, and the trial proceeds. Al

Hoffman, Connie Richardson, Mrs. Hazel Bonebrake, Chas. Richardson and Guy Baker testify for the State in the order named. During the testimony the following State's exhibits were introduced and admitted in evidence:

No. 1, Certified copy of Casa Grande City Ordinance No. 101;

No. 2, Book "Religion" sold to Connie Richerson;

No. 3, Pamphlet, "Judge Rutherford Uncovers Fifth Column";

No. 4, Book "Religion" sold to Chas. O. Richardson;

No. 5, Pamphlet, same as Ex. 3.

Defendant's Ex. A, "To Whom it May Concern", defendant's testimonial card.

Defendant's Exhibit B, Phonograph and record.

Charles Jobin testified in his own behalf and both sides rested. After argument of counsel and instructions of the court, Counsel for Defendant moves the court for a directed verdict in favor of the defendant, which motion was denied by the court, and now, the jury retired in charge of sworn bailiff to deliberate, and thereafter return into open court the following verdict (Omitting title of court and cause):

VERDICT

"We, the Jury duly empaneled and sworn in the above entitled cause, do find the defendant, Charles Jobin, guilty as charged in the complaint.

John A. Foreman, Foreman."

[fols. 72-93] And if is ordered that the verdict be filed and recorded.

JUDGMENT AND SENTENCE

The defendant, by counsel, in open court announcing that he is now ready for sentence, and being asked if he has any cause to show why judgment and sentence should not now be pronounced, and no sufficient or any cause being shown or appearing to the court, It is the Judgment of the court that you, Charles Jobin, are guilty as charged, and as Sentence of the court that you pay a fine in the sum of $50.00, and if said fine is not paid, that you be confined in the County Jail of Pinal County, Arizona, for one day for each dollar of said fine, if not paid.

NOTICE OF APPEAL

Thereupon, the defendant in open court gives notice of appeal to the Supreme Court of the State of Arizona, and asks that bond on appeal be fixed, and the court thereupon fixes the amount of appeal bond to be given by said defendant at the sum of $300.00 to be approved as to form and sufficiency by the Clerk of this court, and that, pending the giving of said bond, the defendant is released in the custody of his attorney.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 94] IN SUPREME COURT OF ARIZONA

No. 904

THE STATE OF ARIZONA, Appellee,

vs.

CHARLES JOBIN, Appellant

Appeal from Superior Court of Pinal County

Honorable Levi S. Udall, Judge

Judgment affirmed.

Joe Conway, Attorney General, Albert M. Garcia, his assistant, of Phoenix; Chas. H. Reed, of counsel, of Coolidge, for Appellee.

Charlie W. Clark, of Phoenix, Attorney for Appellant.

OPINION—Filed October 20, 1941

LOCKWOOD, C. J.:

This is an appeal by Charles Jobin, called defendant, from a judgment pronounced on him, after a verdict by a jury in the superior court of Pinal County finding him guilty of a violation of ordinance number 101, of the City of Casa Grande. The provisions of the ordinance which defendant was found guilty of violating read as follows:

"Section 1. It shall be unlawful for any person • • • to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having

procured a license from the City of Casa Grande, so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *."

"Section 2. As used in this ordinance, the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande * * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance".

[fol. 95] It was enacted under the provisions of section 16-207, A. C. 1939, which reads so far as material as follows:

"*General powers of common council enumerated.* The common council of such town shall have control of the finances, and of the property of the corporation; and shall likewise have power within the limits of the town:

"20. To license, tax and regulate * * * peddlers * * *."

The ordinance on its face is the ordinary occupational license tax ordinance for the purpose of raising revenue and is, generally speaking, valid. City of Glendale v. Betty, 45 Ariz. 327, 43 Pac. (2d) 206. Nor, indeed, does defendant deny this fact. His contention is that if the ordinance is construed to apply to his actions as they appear in the record, it is unconstitutional and void as being in conflict with the First Amendment to the Constitution of the United States, which reads as follows:

"(Religious and political freedom.) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The facts as shown by the evidence and found by the jury may be stated as follows: Defendant is a regularly ordained minister of the denomination commonly known as Jehovah's Witnesses, and on August 15, 1940, was going

from house to house in the city of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various religious records on a phonograph, with the approval of the householder, and by distributing printed books, pamphlets and tracts which set forth his views as to the meaning of the Bible. The method of distribution of these printed books, pamphlets and tracts was as follows: He first offered them for sale at various prices ranging from five to twenty-five cents each. If the householder did not desire to purchase any of them he then left a small leaflet summarizing some of the doctrines which he preached. In at least two cases, however, he sold a copy of one of the printed books which he had offered, [fol. 96] for twenty-five cents.

Defendant admitted that he was offering these books and pamphlets for sale regularly in the City of Casa Grande and elsewhere, but stated that in some cases, if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge. He also testified that he was doing this because he believed it was his religious duty to do so. He admitted that not only he had not applied for a license to sell the books in question, under the ordinance above set forth, but that when the city marshall told him that he was violating the ordinance, he insisted that he had a right to do so and refused to purchase a license. It is claimed that he could not be compelled to take out a license as preliminary to selling the books and pamphlets in question because (a) it violated his right of free speech, and (b) his free exercise of religion, as guaranteed him by the First Amendment, supra.

The first question we consider is whether what he was engaged in doing was peddling, for if it was not he has not violated the ordinance. A peddler has been comprehensively defined as a small retail dealer who carries his merchandise with him, traveling from place to place, or from house to house, exhibiting his or his principal's goods for sale and selling them. Collender v. Reardon, 138 App. Div. 738, 123 N. Y. S. 587; Ex parte Hogg, 70 Tex. Cr. 161, 156 S. W. 931. Many other definitions have been given by the cases but they all necessarily include a small retail dealer who carries his merchandise with him and travels from house to house.

It is obvious from the record made that defendant was engaged in business as a peddler, for it is not necessary

in order to constitute one such that it should be his sole or principal business. Hays v. Commonwealth, 107 Ky. 655, 55 S. W. 425; State v. Littlefield, 112 Me. 214, 91 Atl. 945. Nor is it necessary that any considerable number of sales be shown. Commonwealth v. Reid, 175 Mass. 325, 56 N. E. 617; State v. Webber, 214 Mo. 272, 113 S. W. 1054. [fol. 97] In the present case not only were two actual sales shown, but defendant stated it was part of his regular business to sell these books and pamphlets. If the books which he sold were dictionaries, works of travel, fiction, or the like there could be no question but that he was engaged in peddling, for instead of taking orders and delivering the books later, he carried them with him and delivered them immediately upon sale. The question then is whether the fact that the books sold, which admittedly contained various arguments and citations supporting the religious belief which he was engaged in promulgating, and which he believed it to be his religious duty to sell, exempts him from the ordinance by reason of the First Amendment to the Federal Constitution, supra.

So far as the right of free speech is concerned, we think the question is definitely settled by the decisions of the supreme court of the United States in Grosjean v. American Press Co., 297 U. S. 233, 80 L. Ed. 660, and Giragi v. Moore, 48 Ariz. 33, 58 Pac. (2nd) 1249, 49 Ariz. 74, 64 Pac. (2d) 819, 301 U. S. 670, 81 L. Ed. 1334. In the Grosjean case the Louisiana statute imposing a license tax for the privilege of engaging in the business of publishing advertising in a newspaper was held *under the circumstances of the case* to constitute a violation of the First Amendment, supra. The court in discussing the matter said:

"* * * The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all a wholly different question would be presented. It is bad because, *in the light of its history and of its present setting*, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. * * *" (italics ours).

The State of Arizona has adopted a general sales tax law, and in the case of Giragi v. Moore, supra, it was contended that under the doctrine of the Grosjean case the sales tax law was invalid as applied to newspapers. We

pointed out the difference between the facts and background of the Louisiana and the Arizona sales tax as affecting newspapers and that our tax was obviously a general rev-
[fol. 98] enue law applied to many other occupations besides newspapers and in no manner an attempt to regulate or limit the publication of a newspaper, and held the law constitutional as not violating the freedom of speech as guaranteed by the 14th Amendment. The case was appealed to the supreme court of the United States, and on the authority of the very Grosjean case relied upon by defendant herein the appeal was dismissed as not involving a federal question. We think it is obvious to anyone who will read the cases above cited on this point that the general revenue ordinance of the city of Casa Grande imposing a license on peddlers is not unconstitutional as applied to the defendant because it violates the right of free speech.

But the point most vigorously urged is that it violates the right of the free exercise of religion. Baldly stated, defendant contends that he has the right to peddle and sell for money any books, papers and pamphlets which uphold and inculcate his particular religious belief, without paying the license required of peddlers of all secular books, merely because he believes it to be his religious duty to do so. The particular denomination to which defendant belongs has been before the courts of the various states and the federal government many times in the last few years, because its members believe they have a right, under the claim of free exercise of religion, to do many things which are prohibited by law and to refrain from doing others which are commanded by law, because their conscience does not approve of the law. We have been cited to a number of cases where this denomination was involved. Among those is the case of Lovell v. Griffin, 303 U. S. 444, 82 L. Ed. 949. The ordinance in that case, however, prohibited the distribution of literature of any kind at any time, at any place and in any manner, free or otherwise, without a permit from the city manager, and gave the manager discretion in the issuance of the permit. The court held, and we think very properly so, that the ordinance was void as striking at the
[fol. 99] freedom of the press and free speech. In the present case the dissimilarity of the two ordinances is obvious. The court instructed the jury as follows:

"* * * The court instructs you as a matter of law that this defendant had a perfect right in the city of Casa

Grande or any other place in the State of Arizona to, as long as he did not disturb the peace or trespass, give his views on religious matters. He had a perfect right to distribute free any pamphlets, books or literature without obtaining from the city of Casa Grande a permit or license to distribute them. The court wants to remind you that in this matter the defendant is accused of having sold these pamphlets, books, etc., without procuring a license or permit so to do. Now if you find from the evidence that he did not sell these books or pamphlets, you should promptly acquit him. On the other hand, if you find he did sell these books and pamphlets without having procured a license so to do, then you should find the defendant guilty."

and it is obvious therefrom that had defendant, in pursuance of his religious belief, distributed the literature free of charge, the jury, under the instructions of the court, would have acquitted him.

The same question was raised in the case of Cantwell v. Connecticut, 310 U. S. 296, 84 L. Ed. 1213, and the court held the ordinance unconstitutional as applied to Jehovah's Witnesses, stating:

"It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse if involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth."

As in Lovell v. Griffin, supra, the ordinance objected to left it to the discretion of a public official as to whether the permit should be granted. The right of free speech, though [fol. 100] not of religious liberty, was also involved in the cases of Schneider v. Irvington, 308 U. S. 147, 84 L. Ed. 155, and Hague v. Com. for Ind. Organization, 307 U. S. 496, 83

L. Ed. 1423. In these cases the court again held the ordinances in question were void on the ground that the permit to be issued involved the discretion of some public officer, and in Schneider v. Irvington, supra, expressly stated:

"* * * The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. * * *

"We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. * * *"

The general question of how far the state may go in adopting rules of conduct which violate the conscience of some individuals is discussed in Hamilton v. University of Cal., 293 U. S. 245, 79 L. Ed. 343. The question involved there was the right of a conscientious objector to refuse to take military training and still insist upon the privilege of attending the state university. The court held that the defendants in that case could not refuse to take the training and at the same time claim the privileges of education. Mr. Justice Cardozo, in a specially concurring opinion, said:

"The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

and in this he was joined by Mr. Justice Stone and Mr. Justice Brandeis.

The latest case from the supreme court of the United States in regard to religious liberty is Minersville School Dist. v. Gobitis, 310 U. S. 586, 84 L. Ed. 1375. This case [fol. 101] involved Jehovah's Witnesses. The local rules of the board of education of the public schools required both teachers and pupils to salute the national flag and pledge allegiance thereto as a daily school exercise. The children of Gobitis refused to do this on the ground that it was con-

trary to the religious belief which they had been taught by their parents, and the court said:

"We must decide whether the requirement of participation in such a ceremony, exacted from a child who refuses upon sincere religious grounds, infringes without due process of law the liberty guaranteed by the Fourteenth Amendment."

After discussing the legitimate right of the propagation of belief as held in Cantwell v. Connecticut, supra, the court continued:

"But the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellow-men. When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, from a penalty for conduct which appears dangerous to the general good? To state the problem is to recall the truth that no single principle can answer all of life's complexities. The right of freedom of religious belief, however dissident and however obnoxious to the cherished beliefs of others—even of a majority—is itself the denial of an absolute. But to affirm that the freedom to follow conscience has itself no limits in the life of a society would deny that very plurality of principles which, as a matter of history, underlies protection of religious toleration. * * *

"* * * The religious liberty which the Constitution protects has never excluded legislation of general scope not directed against doctrinal loyalties of particular sects. Judicial nullification of legislation cannot be justified by attributing to the framers of the Bill of Rights views for which there is no historic warrant. Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. The necessity for this adjustment has again and again been recognized. In a number of situa- [fol. 192] tions the exertion of political authority has been sustained, while basic considerations of religious freedom have been left inviolate. (Citing cases). In all these cases

the general laws in question, upheld in their application to those who refused obedience from religious conviction, were manifestations of specific powers of government deemed by the legislature essential to secure and maintain that orderly, tranquil, and free society without which religious toleration itself is unattainable. * * *"

It is true that Mr. Justice Stone dissented, but his dissent was apparently based on the theory that requiring an affirmative act of saluting the flag was a compulsory expression of a belief which did not coincide with the true belief of the individual and, indeed, violated his religious conviction and was not of sufficient importance to justify the exercise of the police power of the state. In the present case, defendant is not required to refrain from expressing his religious convictions either orally or by means of printed literature. He is not required to affirm his belief in anything which contradicts these convictions. He is required merely to refrain from *selling* this literature without paying the regular license tax required of all other persons who peddle literature of any nature within the city of Casa Grande. We might well call defendant's attention to the language of the Master regarding the tribute money. Matt. 22: 15-21.

Probably the latest and best statement of the general rule to be applied in cases of this kind is found in City of Manchester v. Leiby, 117 Fed. (2d) 661, in the following language:

"* * * The civil authority can never concede the extreme claim that police regulations of general application not directed against any sect or creed—however widely the regulations may be accepted as being reasonable and proper—are constitutionally inapplicable to persons who sincerely believe the observance of them to be 'an insult to Almighty God.' (Citing case)."

We are told in the Scripture that salvation is free. Rev. 21:6; Rev. 22:17. So long as defendant seeks to inculcate his ideas of the proper pathway of salvation "without money and without price", he will not violate the ordinance in question. If, however, he insists upon the right to commercialize his propaganda, he must comply with the law or [fol. 103] pay the penalty, and this in no way violates the

state or the federal constitution guaranteeing the free exercise of religion.

If defendant still feels that he faces a painful conflict between the call of conscience and man made law, he might read the Apologia and Crito and he would find how one of the wisest of mankind, confronted with a similar choice, resolved the difficulty in a way which has stood the test of the moral judgment of mankind for over two thousand years.

The judgment of the superior court of Pinal County is affirmed.

Alfred C. Lockwood, Chief Justice.

Concurring: A. G. McAlister, Judge. Henry D. Ross, Judge.

[File endorsement omitted.]

[fol. 104] In Supreme Court of Arizona

Judgment—October 20, 1941

This cause having been heretofore submitted and the Court having duly considered same and being now advised in the premises, files its opinion. It is accordingly Ordered that the judgment of the trial court made and entered in said cause be and is hereby Affirmed.

In Supreme Court of Arizona

Order Denying Rehearing, etc.—December 11, 1941

Ordered that appellant's motion for a rehearing be denied; and that his application for Stay of Mandate pending Certiorari Proceedings before the Supreme Court of the United States, be granted.

[fols. 105-140] Petition for rehearing covering 6 pages filed Nov. 4, 1941, omitted from this print. It was denied, and nothing more by order of Dec. 11, 1941.

[fol. 141] UNITED STATES SUPREME COURT, OCTOBER TERM, 1941

CHARLES JOBIN, Appellant,

v.

THE STATE OF ARIZONA, Appellee

Appeal from Arizona Supreme Court

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal—Filed January 26, 1942

PETITION FOR APPEAL

Considering himself aggrieved by the final decision of the Supreme Court of the State of Arizona, and the judgments of the courts below, in the above entitled cause, the appellant herein, Charles Jobin, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of an ordinance of the City of Casa Grande, Arizona, known as ordinance number 101, reading,

"Section 1. It shall be unlawful for any person * * * to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this [fol. 142] ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *

"Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande * * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

which ordinance was passed and approved by the City of Casa Grande, Arizona, is drawn in question upon the ground that said ordinance is repugnant to the Fourteenth Amendment to the United States Constitution. The Supreme Court of the State of Arizona is the court of last resort in this cause in the State of Arizona in which a decision could be had and the decision of that court is in favor of the validity of said ordinance.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [U. S. C. Title 28, sec. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Arizona, court of last resort in this cause in the State of Arizona, rendered its decision herein on the 20th day of October 1941, which became final when motion for rehearing was overruled on December 11, 1941, and by its said decision affirmed the judgment of the Superior Court of Pinal County, Arizona. The opinion of said Supreme Court of the State of Arizona has not yet been officially reported but is of record unofficially: State of Arizona v. Charles Jobin, 118 P. 2d 97. [fol. 143] That opinion appears in the record at page —.

The order of affirmance by said Supreme Court of the State of Arizona, entered in the office of the Clerk of said Court on October 20, 1941, became a final judgment on December 11, 1941, the date when appellant's motion for rehearing was overruled.

Assignments of Error

Now comes appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

First: The Supreme Court of the State of Arizona committed reversible error in failing to hold that the ordinance

in question as construed and applied to appellant is void by reason of the fact that it deprives him of his right of freedom to worship Almighty God as by Him commanded in His written Word and in accordance with appellant's conscience.

Second: The Supreme Court of the State of Arizona committed reversible error in failing to hold that the ordinance in question as construed and applied to appellant is void by reason of the fact that it deprives him of his right of freedom of speech, of press and of assembly, all in violation of Section 1, Fourteenth Amendment to the United States Constitution.

PRAYER FOR REVERSAL

For and on account of the above errors the appellant, Charles Jobin, prays that the said judgment of the Supreme [fols. 144-145] Court of the State of Arizona hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for his costs.

Charlie W. Clark, Hayden C. Covington, Attorneys for Appellant.

[fol. 146] [Stamp:] Filed Jan. 26, 1942. Eugenia Davis, Clerk Supreme Court

UNITED STATES SUPREME COURT, OCTOBER TERM, 1941

CHARLES JOBIN, Appellant,

v.

THE STATE OF ARIZONA, Appellee

Appeal from Arizona Supreme Court

ORDER ALLOWING APPEAL—Filed January 26, 1942

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Arizona on the 20th day of October, 1941, affirming the judgment of the Superior Court of Pinal County, Arizona, in said cause

there titled, to wit, The State of Arizona, appellee, v. Charles Jobin, appellant.

It appearing that the appellant in his Brief filed originally in said cause before argument attacked the statute in question on the grounds, as contended by him, that it unreasonably deprives him of freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and that it is void because discriminatory and unreasonable, and unfairly discriminates as to his occupation, all of which contentions were overruled by decision and judgment of the said Supreme Court of the State of Arizona previously rendered herein.

It appearing that appellant has presented and filed his petition for appeal to the Supreme Court of the United [fols. 147-157] States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of the State of Arizona became final on December 11, 1941, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Arizona and the said judgment of the Superior Court of Pinal County, Arizona, in aforesaid cause as provided by law, and

It is Further Ordered that the Clerk of the Supreme Court of the State of Arizona shall prepare and certify a transcript of the record, proceedings, and judgment in the said cause and transmit the same to the Supreme Court of the United States together with all exhibits in the original form, so that he shall have the same in said Court within twenty (20) days from date.

And it is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars, and appellants having presented an undertaking in the sum of Five Hundred ($500.00) Dollars executed by the National Surety Corporation, it is further ordered that such undertaking be and the same is hereby approved and ordered filed.

Dated, January 26, 1942.

Alfred C. Lockwood, Chief Justice of the Supreme Court of the State of Arizona.

[fols. 158-160] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON—Filed February 19, 1942

Comes now appellant in the above-entitled cause and states that the points upon which he intends to rely in this Court in this cause are as follows:

Point 1. The ordinance of the City of Casa Grande, to wit, City ordinance number 101, as construed and applied to appellant is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of freedom to worship ALMIGHTY GOD, Jehovah, and freedom of conscience, in contravention of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Point 2. The ordinance of the City of Casa Grande, to wit, City ordinance number 101, as construed and applied to appellant is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of freedom of speech and of press, in contravention of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Charlie W. Clark, Hayden C. Covington, Attorneys for Appellant.

[fol. 161] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed March 21, 1942

To the Clerk of the Supreme Court of the United States of America:

Please arrange for printing of the following parts of the record in the above entitled cause:

1. The entire record forwarded by the Superior Court of Arizona to the Arizona Supreme Court, being the entire record which the Arizona Supreme Court had before it at the time its decision herein was rendered, including the information and complaint, transcript of the testimony, verdict of the jury, judgment of the Superior Court, notice of

appeal, etc., But Omitting the Printing of each of the following portions:

(a) Plaintiff's Exhibit 2 and Exhibit 3, consisting of a green covered book captioned "Religion" and a buff col-
[fol. 162] ored document captioned "Judge Rutherford Uncovers Fifth Column";

(b) Appellant's opening brief (which is incorporated in the Superior Court record).

2. Opinion of the Arizona Supreme Court dated October 20, 1941.

3. Judgment of the Arizona Supreme Court affirming the judgment of the Arizona Superior Court.

4. Omit printing of the motion for rehearing in the Arizona Supreme Court, and also omit printing supplemental brief on the motion for rehearing, but Print in the record the fact that the motion for rehearing was filed, with date of its filing.

5. Order overruling the motion for rehearing, showing date.

6. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

7. Order allowing appeal to the Supreme Court of the United States.

8. Statement of points to be relied upon in the Supreme Court of the United States.

9. Order of the Supreme Court of the United States noting probable jurisdiction, dated March 16, 1942.

Hayden C. Covington.

[fol. 163] STATE OF NEW YORK,
County of Kings, ss:

Hayden C. Covington, being sworn, says that he is Attorney for Appellant in the above entitled cause; that he served the within "Designation of Parts of the Record to be Printed" upon counsel for appellee in said cause by sending via air mail, in a securely sealed envelope, fully addressed and with air-mail postage fully prepaid, a true copy thereof to Charles H. Reed, Coolidge, Arizona, and similarly sent a copy to Joe Conway, Attorney General

of the State of Arizona, Phoenix, Arizona, on March 20, 1942.

Hayden C. Covington.

Sworn to and subscribed before me this 20th day of March 1942. William K. Jackson, Notary Public, Kings County. Kings Co. Clks. No. 73, Reg. No. 3005. Commission expires March 30, 1943. (Seal.)

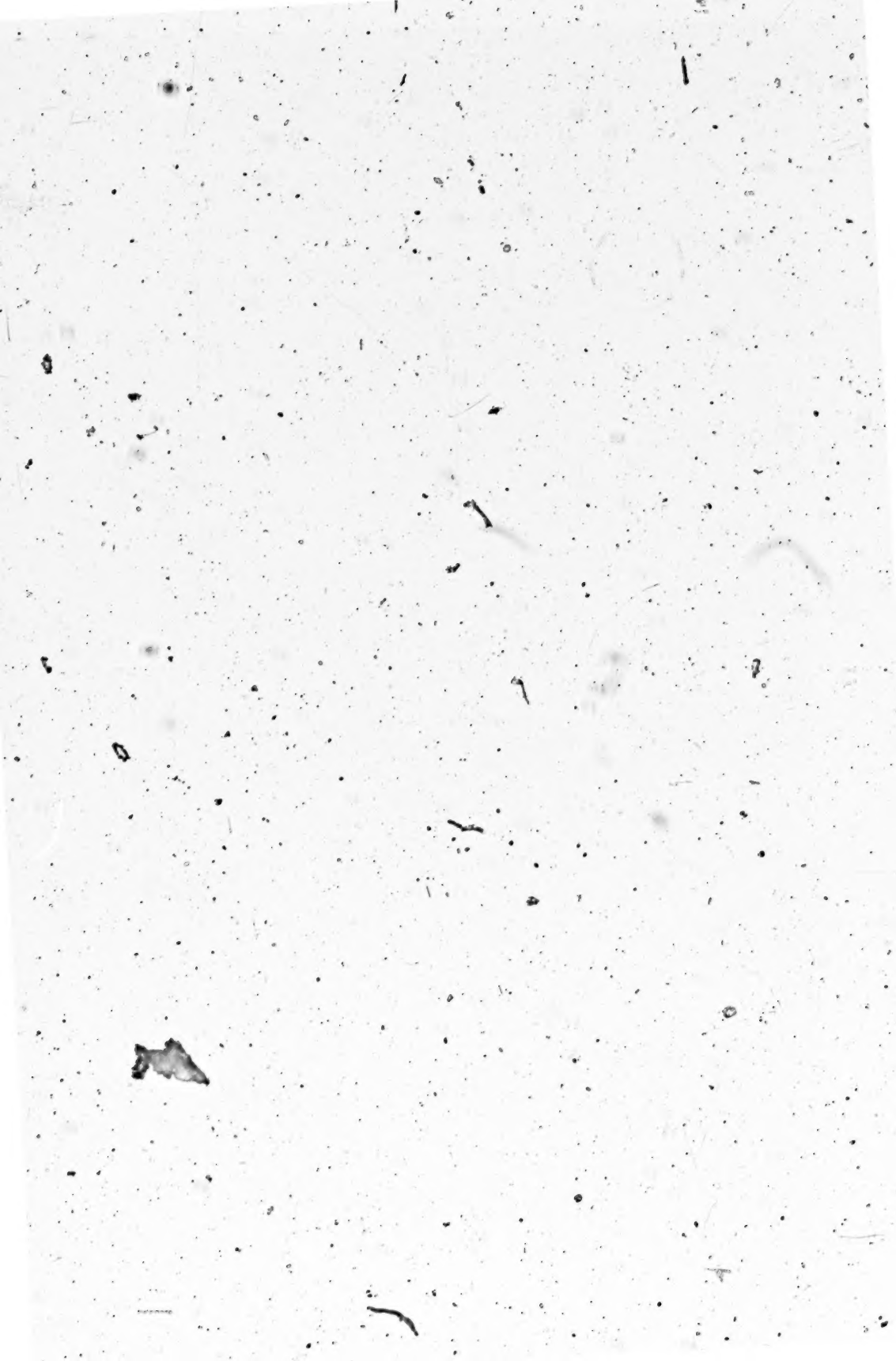
[fol. 164] [File endorsement omitted.]

[fol. 165] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—March 16, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: Enter Hayden C. Covington. File No. 46,294. Arizona, Supreme Court, Term No. 966. Charles Jobin, Appellant, vs. The State of Arizona. Filed February 19, 1942. Term No. 966 O. T. 1941.



FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 966

CHARLES JOBIN,

Appellant,

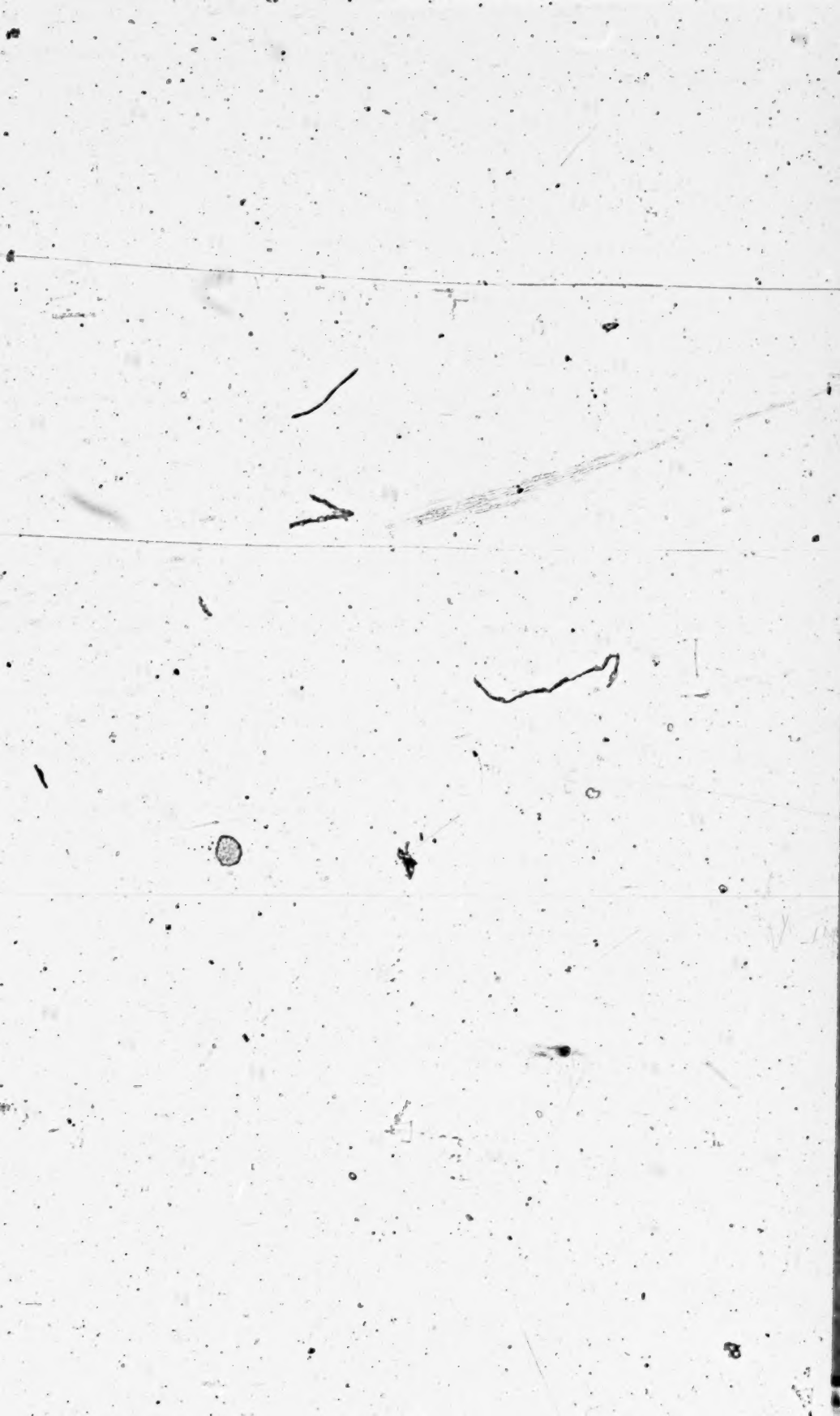
vs.

THE STATE OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA.

STATEMENT AS TO JURISDICTION.

CHARLIE W. CLARK,
HAYDEN C. COVINGTON,
Counsel for Appellant.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 966

CHARLES JOBIN,

Appellant,

vs.

THE STATE OF ARIZONA,

Appellee.

APPEAL FROM THE SUPREME COURT OF ARIZONA.

JURISDICTIONAL STATEMENT.

In compliance with rule 12 (1) of the Supreme Court of the United States of America, appellant files this his statement disclosing the basis upon which he contends that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in

any case which under prior statute could be received as a matter of right on writ of error.

Arizona Legislation Drawn in Question.

The legislation, constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Casa Grande, known as ordinance number 101. Said ordinance reads as follows:

> "Section 1. It shall be unlawful for any person * * * to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *
>
> "Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande. * * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

(See Record, page —.) The entire ordinance appears in the record at pages —.

The Arizona Supreme Court and the courts below held that the ordinance was not unconstitutional and that it did not deprive appellant of his right of freedom to worship ALMIGHTY GOD, freedom of speech and freedom of press, contrary to Section 1, Fourteenth Amendment to the United States Constitution. Said courts also held that the ordinance was not unreasonable, arbitrary, discriminatory, and was not in excess of the police power of the city. Accordingly, that court of last resort of the State of Arizona

sustained the application of the ordinance to appellant and decided in favor of validity of said ordinance and held it to be constitutional on its face and as construed and applied.

Timeliness.

The judgment of the Supreme Court of Arizona was rendered and entered on October 20, 1941 (R. —). The opinion of that court was delivered on the same date and appears in the record at pages —. The opinion is reported in 118 P. 2d 97, and is not yet officially reported. Within the time and manner allowed by law and the rules of the Supreme Court of the United States, appellant filed his motion for rehearing, which said motion was duly considered by the Supreme Court of Arizona. Thereafter on the 11th day of December, 1941, the Supreme Court of Arizona rendered and entered its order denying appellant's motion for rehearing (R. —); thereby the judgment became final on December 11, 1941, the date of the order overruling the motion for rehearing.

The petition for appeal is duly filed and presented within three months from December 11, 1941, and is therefore timely.

Statement of Nature of Case and Rulings of the Court.

The facts in this case are simple and undisputed. Appellant is a regularly ordained minister of the denomination commonly known as Jehovah's witnesses. On August 15, 1940 he was going from house to house in the City of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various Biblical records on a phonograph, with approval of the householder, and by distributing printed books, pamphlets and leaflets which set forth his views as to the meaning of the Bible prophecies. The method of distribution of these printed

books, pamphlets and leaflets was as follows: At conclusion of the playing of a phonograph record, appellant would invite the householder to receive one or more of the books or pamphlets and to contribute a small sum to aid in printing and distributing more like literature. Whenever a householder did not desire to receive a book or booklet he left a small leaflet summarizing some points of the Bible message which he preached. In at least two cases he delivered a copy of one of the printed books and received from each of the householders a contribution of twenty-five cents. Appellant admitted that he was offering and delivering said literature in like manner regularly in the City of Casa Grande and elsewhere, and also that in some cases when householders were not in position to make a money contribution and desired and promised to read the literature carefully, to such persons he gave a book or a pamphlet free of charge. Appellant also testified that he did this work because he believed it was his God-given duty to do so. He admitted that not only had he not applied for a license under the ordinance above set forth, but that when the city marshal told him that he was violating the ordinance, he insisted that he had a right to do the work and refused to purchase a license. On behalf of appellant it was contended that he could not be compelled to take out a license as a condition precedent to performing such work in the manner above described because (a) it violated his right of freedom of press, and (b) his freedom to worship Almighty God, as guaranteed to him by the Federal Constitution.

Appellant, one of Jehovah's witnesses, is an ordained minister of Almighty God, preaching the gospel of the Kingdom of Jehovah God, The Theocracy, and as such he is consecrated to bear public witness thereto. At the time of his arrest he was preaching the gospel of God's Kingdom from house to house (Acts 20:20), following in the foot-

steps of Christ Jesus and His apostles (1 Peter 2:9, 21), by distributing Biblical literature in the manner above described. Appellant's sole purpose and objective in thus distributing said literature was to preach said gospel message and thus to provide to others information contained in said literature. His objective was not a commercial one; he was not doing the work for pecuniary gain for himself or for the publishing organization that provided said literature for him to circulate. His inviting and accepting money contributions from willing recipients of the literature was definitely *incidental* to appellant's primary aim and purpose.

The aforesaid literature thus distributed by appellant and by all other of Jehovah's witnesses relates exclusively to Biblical matters, explaining God-given prophecies recorded centuries ago in Holy Writ and which are now being fulfilled, and showing how, according to the Bible, the time is near when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16:13-16); which destructive ACT OF GOD shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the universe, to bring peace, joy, prosperity, happiness and endless life to all persons on earth who survive that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth. Contents of said publications are, in part, admittedly, a vigorous attack upon religion as practiced today and at all time since man has been upon earth, but ALSO such contents clearly set forth the *true distinction* between all religion, on the one

hand, and, on the other hand, the true worship (or service) of Almighty God, thereby exposing religion as a snare to be shunned by the upright, and proving that *no* religion is in any way related to or a necessary part of the true worship of Almighty God and His King Christ Jesus. That no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and does not in any way interfere with the governments of various nations of earth.

The public method of preaching the gospel employed by appellant is following exactly in the footsteps of the Lord Jesus Christ, who also taught *publicly* and from house to house.—Luke 8:1; Acts 20:20.

The undisputed evidence showed that appellant is not a peddler of goods, wares or merchandise in the sense ordinarily understood or intended by the terms of the ordinance, because he is an ordained minister of Jehovah God, preaching the gospel from house to house as well as on the public ways.

The above facts are undisputedly established in the trial court, and the Arizona Supreme Court so found. (R. —).

Appellant was arrested and charged in the municipal court with violation of the aforesaid ordinance, and on trial was convicted for a violation thereof. He duly appealed his case to the Superior Court of Pinal County, Arizona (R. —). In due time his said case was tried *de novo* to a jury before Levi S. Udall, Judge of the Superior Court, resulting in a verdict of guilty and assessment of a fine, in default of which he was ordered to jail and thereupon duly and timely appealed said conviction to the Supreme Court of Arizona. Errors pertaining to his conviction were duly assigned in the Supreme Court of Arizona, according to the rules of said court, and the matter was duly and regularly heard, and on October 20, 1941 the judgment of the Superior Court of Pinal County was affirmed (R. —).

Thereafter appellant's motion for rehearing was overruled on December 11, 1941.

Federal Questions Presented.

In the municipal court, by motion to dismiss (R. —), and in the Superior Court by motion to dismiss and motion for instructed verdict filed at the close of all the evidence (R. —), and by motion for new trial (R. —), and in the Supreme Court of Arizona by assignments of error and brief, appellant duly and timely raised in the manner required by law certain Federal questions, contending in each of said motions that the ordinance in question as construed and applied deprived him of his rights of freedom to worship ALMIGHTY GOD as by Him commanded in His written Word and according to dictates of appellant's conscience, and of freedom of speech and freedom of press, contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

Each of these contentions was overruled by the municipal court, by the Superior Court, and by the Arizona Supreme Court. The Supreme Court of Arizona finally passed upon each of said Federal questions or assignments of error attacking the validity of the ordinance and held the legislation valid and constitutional as construed and applied (R. —). Each of the aforesaid grounds presenting Federal questions has been brought to this Court by specific assignments of error contained in the petition for appeal duly and timely filed herewith.

Grounds and Decisions Sustaining Appellate Jurisdiction of the United States Supreme Court and Showing Federal Questions.

APPELLANT'S CONTENTIONS.

1. The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void, in

that it unreasonably and unlawfully deprives appellant of his right of freedom of press and freedom of speech, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

2. The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of his right of freedom to worship Almighty God, Jehovah, as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

Discussion of Ordinance in Question and of Opinion of the Court Below.

It is to be noticed that in the opinion by Chief Justice Lockwood of the court below he refers to the fact that appellant contends that the ordinance is void because it deprives appellant of his right of freedom of speech. While this is true, it should be noticed that in the record appellant also contended that the ordinance deprived him of his right of *freedom of the press*. Repeated use of the term "freedom of speech" in the opinion without reference to *freedom of the press* apparently is merely an oversight and was intended by the writer of the opinion to include freedom of *the press*.

A proper and judicial construction of the ordinance in question would necessarily have excluded appellant's activity from the terms thereof, because appellant was admittedly an ordained minister of the gospel, preaching the gospel by distribution of literature and simultaneously receiving money contributions.

The opinion of the court is to the effect that had appellant not received money contributions he would not have

been within terms of the ordinance, and that by reason of "making sale" of literature he was properly constituted a peddler, subject to payment of the license tax provided for "peddling" within the city, and that therefore his constitutional rights of freedom of worship and freedom of press were not denied him in the circumstances of this case.

The liberty of the people to exercise their right of freedom of speech, of press and of worship depends not upon whether money contributions are received to defray the expense of such activity. As to the construction of the ordinance and what activity the word "peddler" does or does not include, this Court is not concerned. The Arizona Supreme Court's interpretation is final in that regard. However, this rule does not enjoin this Court from determining whether the ordinance as construed by the Arizona Supreme Court violates the Federal Constitution.

If it is found that the admitted exercise of freedom of press and of worship is directly and unlawfully burdened by this ordinance, it is the duty of this Court to reverse the judgment of the courts below. *Henderson* v. *New York*, 92 U. S. 219, 237.

The effect of the decision of the court below is to *amend* the Constitution of the United States in a manner contrary to law and reasoning expressed in the opinions of this Court. The Arizona Supreme Court has *grafted* a new theory, entirely foreign to American life, onto constitutional law of the nation—which should be removed and eradicated by this Court before it reaches more devastating consequences. The court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, *i.e.*, if money was accepted for the literature distributed that such transaction took the matter beyond the reach of the shield of the Federal Constitution's Fourteenth Amendment.

Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against ordinances such as this if he *gave away* printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as each petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money contributed by some who accept literature is only *incidental* to the main activity of appellant. It is a means to an end, to wit, further proclamation of the Kingdom message of Almighty God.

Manchester v. *Leiby*, 117 F. (2d) 661, relied on by the Arizona Supreme Court, is not in point and does not govern here, because it concerned only an ordinance requiring "identification" and not a permit or license. That *Manchester* v. *Leiby* opinion is repugnant to the Constitution and applicable opinions by this Court. (See *Herder* v. *Shahadi*, 14 A. (2d) 475, where an identical ordinance was outlawed.) Denial of certiorari (61 S. Ct. 838) does not

mean that this Court approved the reasoning or the holding of the First Circuit Court of Appeals. See *United States* v. *Carver,* 260 U. S. 482, 490.

A minister of the gospel cannot be licensed to perform acts of worship of Almighty God. Furthermore, the ordinance does not mention or contemplate ministers. The constitutional "right" to serve Almighty God cannot be taxed or licensed. It is not a "privilege," but a *right*. As construed, the ordinance licenses acts of worship; that is to say, preaching the gospel by distribution of literature explaining the Bible. To permit such taxing or licensing is authorizing and encouraging an unlawful joinder of "state and church."

The Arizona Supreme Court's straitened view of what constitutes an "ordained minister" and "preaching the gospel" prevents that court from discerning how appellant's acts are safeguarded under the protecting shield of the Federal Constitution against all sorts of encroachment by license, especially when the court below found that appellant was "preaching the gospel as a regularly ordained minister."

That court's straitened view seems to arise from the private opinion of its members that appellant's challenged activity is "commercial" simply because it is unlike commonly recognized practices of religious clergymen.

As long as appellant's practice does not infringe the law of morals or the right of property of others, the judiciary as well as any administrative agency is precluded from invading the field of opinion and practice to say that a given activity is not in fact an act of worship protected under the constitutional shield.

To "preach" means to proclaim a message.

"Preaching the gospel of the kingdom of God" means proclaiming to others the Scriptural truths of and con-

cerning Jehovah God and His kingdom under Christ Jesus, as commanded in the written Word of God.

To be *ordained* thus to minister or serve merely means to be appointed by the proper authority to a position or office to perform duties specifically assigned. Jehovah's witnesses being selected by Almighty God, Jehovah, it follows that JEHOVAH is the authority who appoints, *ordains*, His servant or minister, as it is written at Isaiah 42:1; Isaiah 43:10-12; Isaiah 61:1-3; John 15:16. Those and other Scriptures clearly state the commission of authority given by Almighty God through His Son Christ Jesus to persons on earth who are servants, or ministers, or witnesses, of Jehovah.

Since Jehovah's witnesses operate in a legal and orderly way through their corporate representative the Watchtower Society, they also possess an earthly ordination. To each one who gives evidence that he is fully devoted to Almighty God and His Kingdom in obedience to the God-given commands written in the Bible, that Society issues an identification certificate showing that such person is recognized by Jehovah's witnesses collectively as an ordained minister or servant, of the Lord.

From the foundation of the United States this country has been recognized and declared by this Court to be "a Christian nation". *Holy Trinity Church* v. *United States*, 143 U. S. 457. This means that its people endeavor to follow in the footsteps of Christ Jesus. All followers of Jesus Christ are duty bound to obey the law of Almighty God and to follow in the footsteps of His Son, Christ Jesus. (Psalm 40:8; 1 Peter 2:9, 21) Jesus set the only example to follow when He said: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) It is written of Him that He went throughout every city and village teaching and preaching the kingdom of God. (Mark 6:6; Luke 8:1) See also Matthew 10:7, 12-14. Jesus and

His apostles taught publicly.—Acts 20:20; see also Proverbs 1:20, 21.

A minister of Jehovah God, following in the footsteps of Jesus, is a witness for Jehovah God, viz., one of Jehovah's witnesses. "Ye are my witnesses, saith Jehovah, that I am God." Isaiah 43:10-12). Jehovah's witnesses are commanded by Almighty God to preach, as it is written at Isaiah 61:1, 2 to wit:

> "The Spirit of the LORD GOD is upon me; because the LORD hath annointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the LORD, and the day of vengeance of our God; to comfort all that mourn."

Jesus said that He came into the world for only one purpose, namely, to bear witness to the truthful promise of Almighty God to set up His Theocratic Government to rule the entire earth in righteousness. (John 18:37) According to Matthew 24:14 Jesus commands His followers thus: "This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." Jehovah's witnesses are commanded thus to proclaim His judgments against "Christendom" "publicly and throughout every city until the cities are desolate".—Isaiah 6:11.

To enable appellant thus effectively to preach the gospel from house to house throughout the city he uses pamphlets, magazines and books which contain the Bible message. The content of the pamphlets he distributed has been heretofore described. That literature he employs as a substitute for talking or sermons. It is more effective because it can be and is studied by recipients in the quiet of their homes, at their own convenience. Thus much time of both recipient and preacher is saved and more people are served. Ap-

pellant's taking of the contribution of money given by some is *incidental* or collateral to the primary aim and purpose to disseminate information to benefit every person willing to receive such.

Appellant refused to apply for a license because he regarded himself as sent by Jehovah God to do His work and believes that such application *by him* would be an act of disobedience to Jehovah God that would result in his (appellant's) everlasting destruction at the hand of Almighty God.

God's law and the requirements of the covenant into which He has taken His ministers, such as appellant, are supreme. (Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7) Neither human creatures nor human powers can set aside the requirements of the law of Almighty God, nor prevent the individual conscientiously to obey the God-given mandate. Nor can such prevention be accomplished by mob violence or by laws mischievously framed or misapplied by men. (Cooley, *Constitutional Limitations*, 8th ed., p. 968) When confronted with inconsistent demands of the two, Jehovah's servants adopt the answer He provided, to wit, "We ought to obey God rather than men." (Acts 5:29) They desire life, which comes only from Almighty God to those who are wholly obedient to His law. (Psalm 36:9; John 17:3) "The law of JEHOVAH is perfect, * * * the statutes of JEHOVAH are right, * * * the commandment of JEHOVAH is pure."—Psalm 19:7, 8.

Jehovah's witnesses are ambassadors for Jehovah's Theocratic Government under Christ. (2 Corinthians 5:20; Ephesians 6:20; see also Jeremiah 49:14; Obadiah 1) Hence the State does not have jurisdiction to intervene by application of law or otherwise to encumber, regulate or interfere with the carrying out of their mission as such ambassadors *in the manner* directed by Almighty God Jehovah. Consequently appellant cannot apply for a permit

.or license without violating his conscience and the covenant which binds him to perform the commands of Almighty God. Jehovah says that covenant-breakers are worthy of death. (Romans 1:31, 32) Furthermore, appellant cannot discontinue preaching the gospel as commanded by Almighty God, and he must continue irrespective of persecution, or otherwise suffer everlasting destruction at the hand of the Most High God, whom he has agreed to obey. (Ezekiel 33:8, 9; Acts 3:22, 23; Jeremiah 26) The law of Jehovah never changes. (Malachi 3:6) He saves those who love and serve Him, but all the wicked He will destroy. (Psalm 145:20) Jehovah keeps all His promises. —Isaiah 46:11.

It would be an insult to Almighty God for one of His servants to apply to another human creature for a permit or license to do that which God has commanded His servant to do under pain of everlasting death for refusal or failure so to do.

The court below *privately* interprets Matthew 22:15-21 to mean that an ordained minister of Jehovah God must stultify his conscience by submitting to the licensing of activity specifically commanded to His ministers by Almighty God in His written Word.

By invoking the counsel given by the Lord Jesus Christ (Matthew 22:15-21), the Arizona Supreme Court thereby judicially subjects itself to the entire law and commandments given by Almighty God.

Almighty God's own interpretation does not support the construction given that Scripture by the Arizona Supreme Court. On the contrary, said court's construction thereof conflicts with the interpretation given by Almighty God and with His written law, which is supreme.

> "No external authority is to place itself between the finite and the Infinite when the former is seeking to render the homage that is due, and in a mode which

commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Constitutional Limitations (Cooley) 8th ed., p. 968.

"* * * Divine Providence * * * hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, and *they are to be found only in the Holy Scriptures* * * * *no human laws should be suffered to contradict these.*"

Blackstone, *Commentaries* Chase 3d ed., pp. 5-7.

The court below interprets *privately* (i. e., for *its own* purpose rather than for the purpose of the Teacher, Jesus Christ) the language of the Lord Jesus—"Render unto Caesar the things that are Caesar's, and unto God the things which are God's" (Matthew 22:21)—to mean that a servant of Almighty God can be required to violate his conscience and submit to the will of the State by asking for and obtaining a license to perform acts which Almighty God through His written Word *commands* His ministers to do.

Such *private* misinterpretation of God-given instruction is "wresting the Word of God" (2 Peter 3:16); for "no prophecy of the scriptures is of any private interpretation,"—2 Peter 1:20.

True construction of this Scripture (Matthew 22:15-21) by the Lord Jesus Christ Himself is provided in the Sacred Record describing His own conduct when demanded by the authority of Caesar to discontinue preaching of the gospel. He refused the demand and emphatically rebuked His accusers, and as a consequence was put to death for His refusal to violate the law of Almighty God. His apostles, following in the course of Jesus Christ, were similarly commanded to discontinue preaching of the gospel, were mobbed and beaten for refusing to cease preaching, and were haled

into court, charged with "turning the world upside down" (Acts 17:6) and advocating a government the King of which is "one Jesus". (Acts 25) As to Jesus' disciples when before the courts under such charge it is written (Acts 5:17-41) that they openly said, "We ought to obey God rather than men." Thereafter, as it is written concerning them, "daily in the temple, and in *every house*, they *ceased not* to teach and preach Jesus Christ." (Acts 5:42) Thus is shown the true construction to be placed upon Matthew 22:15-21 as it relates to the God-given duties performed by an ordained minister of Almighty God in preaching the gospel.

Furthermore, the Arizona Supreme Court also held that the constitutional shield protecting freedom to worship Almighty God according to the dictates of conscience *does not* extend to include ordained ministers of Almighty God preaching the gospel from house to house when money contributions are accepted by such minister from persons who receive from him the printed gospel message.

The Scriptures that court cites have been misconstrued by its *private* interpretation. The word "freely" as used in those Scriptures means generously, liberally, without stint, abundantly.

The record and the opinion below shows that appellant was generous and liberal while preaching the gospel. Appellant offered the literature to every one whom he visited. From some persons who received literature he accepted money contributions, and as to others, "if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge." (Opinion, Supreme Court of Arizona.) Thus is shown again that appellant's object was not a commercial one, not a purpose to accumulate pecuniary gain, and not a purpose under which the gospel message was held back from any one not able to

contribute money to aid in carrying forward appellant's work of preaching.

Jesus Christ's apostle, Paul, defining the principle of God's law expressed in the Scriptures cited by the court below (Revelation 21:6; Revelation 22:17), said that God's minister has a right to expect and accept contributions from any to whom he provides the gospel message. See 1 Corinthians 9:3-27. This is corroborative of the words of Jesus Christ, who said, "The workman is worthy of his meat [maintenance]."—Matthew 10:10, King James Version, and "Emphatic Diaglott".

To permit or to encourage the application of this type of ordinance to the activity of preaching the gospel is to allow the State to *regulate the church*, which would ultimately permit politicians and others to establish through the State a *State religion*, or through license or taxation to suppress and destroy freedom to worship Almighty God. This would be effected by licensing or taxing the followers of Jesus Christ. Thus the people of America would be pushed back into the miserable condition of intolerance, lethargy and indolence of the dark ages from which founders of this "land of liberty" fled during the reign of King George III. All *tendencies* to accomplish a joinder of "church and state", either directly or indirectly (as attempted here against appellant), should be "nipped in the bud". The sedulous avoidance by America of any move toward joinder of "church and state" is discussed in *The Encyclopedia Americana*, Vol. 6. pp. 660, 657-659; and in the *Columbia Encyclopedia* (Columbia University Press). See *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

The Fourteenth Amendment secures to all freedom of the press, against abridgment by the State.

This right and liberty are not confined to printing, but also embrace the right to distribute, to circulate printed informative matter, to disseminate ideas in recorded form.

Liberty of circulation is as essential as liberty to print; indeed, without circulation publication would be of little, if any, value. *Ex parte Jackson*, 96 U. S. 727, 733; *Lovell* v. *City of Griffin*, 303 U. S. 444; *Grosjean* v. *American Press Co.*, 297 U. S. 233.

The undisputed evidence and the findings of all the courts below show that appellant is engaged in activity of "the press".

It is clearly evident that to hold that the constitutional shield protecting freedom of press covers only "free" or *gift* distribution of pamphlets and other printed informative material is to sound the death toll for that most vital of constitutional rights in this country.

In *Commonwealth* [Pa.] v. *Reid et ux.*, 20 A. (2d) 841, the ordinance of the Borough of Clearfield was very similar to that of the City of Casa Grande. After quoting from *Lovell* v. *City of Griffin*, *supra*, President Judge Keller said:

> "The historical reference to 'pamphlets' in that [*Lovell*] opinion and in other opinions of that Court (*Schneider* v. *State* (Town of Irvington), supra, p. 164; *Thornhill* v. *Alabama*, 310 U. S. 88, 97; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245-250, etc.) is not limited to 'pamphlets' which are distributed without cost. Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the *Grosjean* case, were not for the most part circulated *gratis*, but were distributed to subscribers or sold."

Even the First Circuit Court of Appeals that wrote the opinion in the case of *Manchester* v. *Leiby*, *supra*, relied on by the court below in the case at bar, held specifically that freedom of the press is not limited to "free" or gift distribution, saying:

> "* * * We take it also that this constitutional right to make reasonable use of the streets for the pur-

> pose of distributing literature is *not limited to handing it out free of charge*, but *includes also the right to offer the literature for sale* so as to defray the cost of publication—otherwise, the circulation of one's opinions or the propagation of one's faith on an extensive scale would tend to become a prerogative of the well-to-do."
>
> *Hannan et al.* v. *City of Haverhill* (Mass.), 120 F. (2d) 87 (May 29, 1941).

In the case at bar, the license tax provided for, as applied, is not at all different from the tax struck down in the case of *Grosjean* v. *American Press Co.*, 297 U. S. 233. There the tax was based on gross receipts of the newspaper with circulation over 20,000 copies per week. Here the ordinance provides for a license on peddling literature within the city. It also provides, by the court's construction, for license fee for dealers in periodicals and newsstands selling periodicals, and for license tax for agents selling merchandise.

It is a well-known fact (of which this Court will take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as "Collier's", "The Ladies Home Journal," "The Saturday Evening Post" and "Liberty". This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

While casual consideration might lead one to believe that the ordinance in question is one of the "ordinary forms of taxation for support of the government", yet a more careful consideration thereof conclusively shows that it is adroitly aimed, by construction of the court, at *circulation* and can be misused to utterly destroy distribution of literature containing information and opinion.

A case directly in point, decided November 5, 1941, involving four of Jehovah's witnesses, was prosecuted under an identical license-tax ordinance of the City of Rutland, Vermont. (*State of Vermont* v. *Greaves*, 22 A. (2d) 497.) There the Vermont Supreme Court held that ordinance was a direct burden upon freedom of the press and was identical in effect with the law knocked down in the *Grosjean* case, *supra*.

As our further argument we here adopt in its entirety the opinion of Mr. Justice Sutherland in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-251, and also the statement appearing in *Near* v. *Minnesota*, 283 U. S. 697, 707-716 *et seq.*

The ordinance is clearly *not regulatory*. The license tax provided for is not a general taxing law for support of government as contemplated by this Court. The ordinance throws the burden upon the pamphleteer or other distributor of limited means and thus stops circulation. A thousand distributors would be required to pay, annually, $100,000 to function under the ordinance. Under the same ordinance the one printer for the thousand distributors would be required to pay only $100 annually. The unreasonableness of the ordinance license tax is manifest.

The license tax here cannot be distinguished from the type of law requiring a permit from a police chief or other authorized official in whom is vested discretion to grant or refuse the permit. This character of law is admittedly unconstitutional. See *Lovell* v. *Griffin*, 303 U. S. 444, and *Schneider* v. *State*, 308 U. S. 147. The same prohibitive result or evil can be and is reached under the license tax law here through increasing the license fee so as to make it impossible for all, except the ultrarich, to exercise constitutional rights guaranteed to everyone. Thus the right of liberty and freedom secured to all by the Constitution would become the prerogative of the wealthy. Indeed, one

might be too poor to pay even the smallest possible license fee that may be fixed and thus be refused the rights guaranteed him under the Constitution by reason of his property. The exercise of rights so vital to the maintenance of democratic principles is not and cannot be made dependent upon one's ability to raise sufficient funds wherewith to pay a license tax fee as a condition precedent to the exercise thereof. To thus hold might and would deprive large segments of the population of the guarantee of their freedom. The results would be a substantial dissolution of the rights of the people and a serious impairment of equality of the inhabitants of this land, and would make indigence a basis for restricting freedom of civil rights.

The ordinance questioned here permits the people, in the exercise of their constitutional rights, to be divided into two classes; one class with worldly riches free to exercise the right of freedom of press and worship according to the dictates of conscience, and another class that is poverty-stricken to the point of being unable to purchase the required license to exercise those vital rights. Thus the ordinance is at war with the Constitution and is a short-sighted blow at the security of the people's liberties.

Laws which make unlawful the bringing of indigents into a State are unconstitutional and void. See *Edwards* v. *California*, 62 S. Ct. 164, 166-170. The principle announced in that case makes such, by analogy, authority for the appellant here.

The license tax here applied to the exercise of an admitted constitutional right can be likened to the various kinds of taxes that have been knocked down as being unconstitutional burdens upon interstate commerce.

Appellant does not and can not rely upon the interstate commerce clause itself. However, by analogy, appellant's exercise of his rights of "free press" and "worship" is

entitled to *equal protection* against any direct-tax burden, even as the right of "free commerce between the states".

This Court has held to be bad taxes and license fees which are a direct burden against interstate commerce. Such cases, by analogy, show a similar tax, which directly burdens the exercise of freedom of press and worship, and is likewise bad.

This Court has declared in numerous cases that license-tax laws and peddlers' license ordinances similar to the one here involved are unconstitutional when construed and applied to cover peddlers or agents selling from house to house or on the streets merchandise shipped from another State. See *Sabine Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 494-496; *Caldwell et al.* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128, and *Real Silk Hosiery Mills* v. *City of Portland et al.*, 268 U. S. 325, 335-336.

In these trying hours this Court will be equally as hasty and astute to protect the rights under the "Bill of Rights" and the Fourteenth Amendment to the Constitution as it is in sustaining the commerce clause, especially when human rights are threatened, as here, with destruction by the direct burdening of circulation and distribution, the very life of "free press."

We submit that the ordinance as construed and applied and also, by express provisions, on its face violates the Fourteenth Amendment by reason of denial and abridgment of freedom of press. The decision of the Arizona Supreme Court is contrary to the following decisions and opinions of other courts, to wit:

Schneider v. *State*, 308 U. S. 147;
Lovell v. *City of Griffin*, 303 U. S. 444;
Cantwell v. *Connecticut*, 310 U. S. 296;

Grosjean v. *American Press Co., supra;*
Donley et al. v. *City of Colorado Springs,* 40 F. Supp. 15;
Cincinnati v. *Mosier,* 22 N. E. (2d) 418;
Zimmermann et al. v. *Village of London* (Ohio), 38 F. Supp. 582;
Thomas v. *Atlanta,* 1 S. E. (2d) 598;
Kennedy et al. v. *City of Moscow* (Idaho), 39 F. Supp. 26;
Hannan et al. v. *City of Haverhill* (Mass.), 120 F. (2d) 87;
Reid et al. v. *Borough of Brookville* (Pa.) *et al.,* 39 F. Supp. 30;
Douglas et al. v. *City of Jeannette* (Pa.), 39 F. Supp. 32;
Commonwealth (Pa.) v. *Reid et ux.,* 20 A. (2d) 841;
State (Fla.) *ex rel. Hough* v. *Woodruff,* 2 So. (2d) 577;
State (Fla.) *ex rel. Wilson et al.* v. *Russell,* 1 So. (2d) 569;
Village of South Holland (Ill.) v. *Stein,* 26 N. E. (2d) 868; 373 Ill. 472;
State (S. Car.) v. *Meredith,* 15 S. E. (2d) 678;
Semansky v. *Stark,* 199 So. 129.

In each of the above cases the identical activity of Jehovah's witnesses was involved and the challenged ordinances and statutes were held to be unconstitutional both on their face and as construed and applied, because unlawfully abridging the right of freedom of press.

This Court can take judicial notice of the clearly reasoned opinion of a humble city magistrate of this nation's largest and *greatest* municipality, involving an identical ordinance. Very early New York City's Magistrate Morris Rothenberg discerned and applied the American principles so ably set forth by Chief Justice Hughes in *Lovell* v. *Griffin, supra.*

In *People* v. *Max Banks* (July 20, 1938), 6 N. Y. S. (2d) 41; Judge Rothenberg said:

"I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of *selling* a pamphlet on the public streets and to impose a penalty of fine and imprisonment for violation of the section mentioned.

"In applying the principle laid down in the Grosjean case to the facts in the Lovell case the Chief Justice said:

'The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." * * * The license tax in Grosjean *v.* American Press Company, supra, was held invalid because of its direct tendency to restrict circulation.'

"Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the *sale* of pamphlets on the streets has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code [of the City of New York] permits free distribution of literature on the public streets without restriction. Free circulation depends as much and conceivably more upon the sale than upon free distribution, considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through *sale* defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon *sale* and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid, * * * it well might result in *destroying* circulation.'"

In *People* v. *Finkelstein*, 2 N. Y. S. (2d) 941, also it was held that license tax ordinances of the City of New York very like the license ordinance of the City of Casa Grande were unconstitutional as construed and applied to *sale* of literature.

It seems that the distinguishing feature overlooked by the court below is well expressed by this Court in *Schneider* v. *State*, *supra*, as follows:

> "* * * Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at *other personal activities*, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial questions were presented before the Arizona Supreme Court.

WHEREFORE, the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important Federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the jurisdictional procedure, as to call for this Court's power of supervision to halt the same.

Confidently submitted,

CHARLIE W. CLARK,
HAYDEN C. COVINGTON,
Attorneys for Appellant.

EXHIBIT "A".

IN THE SUPREME COURT OF THE STATE OF ARIZONA.

No. 904.

THE STATE OF ARIZONA, *Appellee*,

vs.

CHARLES JOBIN, *Appellant*.

Appeal from Superior Court of Pinal County; Honorable Levi S. Udall, Judge. Judgment Affirmed.

Joe Conway, Attorney General,; Albert M. Garcia, his Assistant, of Phoenix; Chas. H. Reed, of counsel, of Coolidge, for Appellee.

Charlie W. Clark, of Phoenix, Attorney for Appellant.

LOCKWOOD, C. J.:

This is an appeal by Charles Jobin, called defendant, from a judgment pronounced on him, after a verdict by a jury in the Superior court of Pinal County finding him guilty of a violation of ordinance number 101, of the city of Casa Grande. The provisions of the ordinance which defendant was found guilty of violating read as follows:

"Section 1. It shall be unlawful for any person * * * to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande, so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *

"Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande.

* * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

It was enacted under the provisions of section 16-207, A. C. 1939, which reads so far as material as follows:

"*General powers of common council enumerated.* The common council of such town shall have control of the finances, and of the property of the corporation; and shall likewise have power within the limits of the town:

"20. To license, tax and regulate * * * * peddlers * * *."

The ordinance on its face is the ordinary occupational license tax ordinance for the purpose of raising revenue and is, generally speaking, valid. City of Glendale *v.* Betty, 45 Ariz. 327, 43 Pac. (2d) 206. Nor, indeed, does defendant deny this fact. His contention is that if the ordinance is construed to apply to his actions as they appear in the record, it is unconstitutional and void as being in conflict with the First Amendment to the Constitution of the United States, which reads as follows:

"(Religious and political freedom.) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The facts as shown by the evidence and found by the jury may be stated as follows: Defendant is a regularly ordained minister of the denomination commonly known as Jehovah's witnesses, and on August 15, 1940 was going from house to house in the city of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various religious records on a phonograph, with the approval of the householder, and by distributing printed books, pamphlets and tracts which set forth his views as to the meaning of the Bible. The method of distribution of these printed books, pamphlets and tracts

was as follows: He first offered them for sale at various prices ranging from five to twenty-five cents each. If the householder did not desire to purchase any of them he left a small leaflet summarizing some of the doctrines which he preached. In at least two cases, however, he sold a copy of one of the printed books which he had offered, for twenty-five cents.

Defendant admitted that he was offering these books and pamphlets for sale regularly in the city of Casa Grande and elsewhere, but stated that in some cases, if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge. He also testified that he was doing this because he believed it was his religious duty to do so. He admitted that not only he had not applied for a license to sell the books in question, under the ordinance above set forth, but that when the city marshal told him that he was violating the ordinance, he insisted that he had a right to do so and refused to purchase a license. It is claimed that he could not be compelled to take out a license as preliminary to selling the books and pamphlets in question because (a) it violated his right of free speech [press], and (b) his free exercise of religion, as guaranteed him by the First Amendment, supra.

The first question we consider is whether what he was engaged in doing was peddling, for if it was not he has not violated the ordinance. A peddler has been comprehensively defined as a small retail dealer who carries his merchandise with him, traveling from place to place, or from house to house, exhibiting his or his principal's goods for sale and selling them. Collender *v.* Reardon, 138 App. Div. 738, 123 N. Y. S. 587; Ex parte Hogg, 70 Tex. Cr. 161, 156 S. W. 931. Many other definitions have been given by the cases but they all necessarily include a small retail dealer who carries his merchandise with him and travels from house to house.

It is obvious from the record made that defendant was engaged in business as a peddler, for it is not necessary in order to constitute one such that it should be his sole or principal business. Hays *v.* Commonwealth, 107 Ky. 655, 55 S. W. 425; State *v.* Littlefield, 112 Me. 214, 91 Atl. 945. Nor is it necessary that any considerable number of sales

be shown. Commonwealth *v.* Reid, 175 Mass. 325, 56 N. E. 617, State *v.* Webber, 214 Mo. 272, 113 S. W. 1054.

In the present case not only were two actual sales shown, but defendant stated it was part of his regular business to sell these books and pamphlets. If the books which he sold were dictionaries, works of travel, fiction, or the like there could be no question but that he was engaged in peddling, for instead of taking orders and delivering the books later, he carried them with him and delivered them immediately upon sale. The question then is whether the fact that the books sold, which admittedly contained various arguments and citations supporting the religious belief which he was engaged in promulgating, and which he believed it to be his religious duty to sell, exempts him from the ordinance by reason of the First Amendment to the Federal Constitution, supra.

So far as the right of free speech [press] is concerned, we think the question is definitely settled by the decisions of the supreme court of the United States in Grosjean *v.* American Press Co., 297 U. S. 233, 80 L. Ed. 660, and Giragi *v.* Moore, 48 Ariz. 33, 58 Pac. (2d) 1249, 49 Ariz. 74, 64 Pac. (2d) 819, 301 U. S. 670, 81 L. Ed. 1334. In the Grosjean case the Louisiana statute imposing a license tax for the privilege of engaging in the business of publishing advertising in a newspaper was held *under the circumstances of the case* to constitute a violation of the First Amendment, supra. The court in discussing the matter said:

"* * * The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, *in the light of its history and of its present setting*, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. * * *" [Italics ours]

The state of Arizona has adopted a general sales tax law, and in the case of Giragi *v.* Moore, supra, it was contended that under the doctrine of the Grosjean case the sales tax law was invalid as applied to newspapers. We pointed out

the difference between the facts and background of the Louisiana and the Arizona sales tax as affecting newspapers and that our tax was obviously a general revenue law applied to many other occupations besides newspapers and in no manner an attempt to regulate or limit the publication of a newspaper, and held the law constitutional as not violating the freedom of speech as guaranteed by the First Amendment. The case was appealed to the supreme court of the United States, and on the authority of the very Grosjean case relied upon by defendant herein the appeal was dismissed as not involving a federal question. We think it is obvious to anyone who will read the cases above cited on this point that the general revenue ordinance of the city of Casa Grande imposing a license on peddlers is not unconstitutional as applied to the defendant because it violates the right of free speech [press].

But the point most vigorously urged is that it violates the right of the free exercise of religion. Baldly stated, defendant contends that he has the right to peddle and sell for money any books, papers and pamphlets which uphold and inculcate his particular religious belief, without paying the license required of peddlers of all secular books, merely because he believes it to be his religious duty to do so. The particular denomination to which defendant belongs has been before the courts of the various states and the federal government many times in the last few years, because its members believe they have a right, under the claim of free exercise of religion, to do many things which are prohibited by law and to refrain from doing others which are commanded by law, because their conscience does not approve the law. We have been cited to a number of cases where this denomination was involved. Among those is the case of Lovell *v.* Griffin, 303 U. S. 444, 82 L. Ed. 949. The ordinance in that case, however, prohibited the distribution of literature of any kind at any time, at any place and in any manner, free or otherwise, without a permit from the city manager, and gave the manager discretion in the issuance of the permit. The court held, and we think very properly so, that the ordinance was void as striking at the freedom of the press and free speech. In the present

case the dissimilarity of the two ordinances is obvious. The court instructed the jury as follows:

"* * * The court instructs you as a matter of law that this defendant had a perfect right in the city of Casa Grande or any other place in the State of Arizona to, as long as he did not disturb the peace or trespass, give his views on religious matters. He had a perfect right to distribute free any pamphlets, books, or literature without obtaining from the city of Casa Grande a permit or license to distribute them. The court wants to remind you that in this matter the defendant is accused of having sold these pamphlets, books, etc., without procuring a license or permit so to do. Now if you find from the evidence that he did not sell these books or pamphlets, you should promptly acquit him. On the other hand, if you find he did sell these books and pamphlets without having procured a license so to do, then you should find the defendant guilty."

and it is obvious therefrom, that had defendant, in pursuance of his religious belief, distributed the literature free of charge, the jury, under the instructions of the court, would have acquitted him.

The same question was raised in the case of Cantwell v. Connecticut, 310 U. S. 296, 84 L. Ed. 1213, and the court held the ordinance unconstitutional as applied to Jehovah's witnesses, stating:

"It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected

by the First Amendment and included in the liberty which is within the protection of the Fourteenth."

As in Lovell *v.* Griffin, supra, the ordinance objected to left it to the discretion of a public official as to whether the permit should be granted. The right of free speech [press], though not of religious liberty, was also involved in the cases of Schneider *v.* Irvington, 308 U. S. 147, 84 L. Ed. 155, and Hague *v.* Com. for Ind. Organization, 307 U. S. 496, 83 L. Ed. 1423. In these cases the court again held the ordinances in question were void on the ground that the permit to be issued involved the discretion of some public officer, and in Schneider *v.* Irvington, supra, expressly stated:

"* * * The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. * * *

"We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. * * *"

The general question of how far the state may go in adopting rules of conduct which violate the conscience of some individuals is discussed in Hamilton *v.* University of Cal., 293 U. S. 245, 79 L. Ed. 343. The question involved there was the right of a conscientious objector to refuse to take military training and still insist upon the privilege of attending the state university. The court held that the defendants in that case could not refuse to take the training and at the same time claim the privileges of education. Mr. Justice Cardozo, in a specially concurring opinion, said:

"The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to

be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

and in this he was joined by Mr. Justice Stone and Mr. Justice Brandeis.

The latest case from the supreme court of the United States in regard to religious liberty is Minersville School Dist. *v.* Gobitis, 310 U. S. 586, 84 L. Ed. 1375. This case involved Jehovah's witnesses. The local rules of the board of education of the public schools required both teachers and pupils to salute the national flag and pledge allegiance thereto as a daily school exercise. The children of Gobitis refused to do this on the ground that it was contrary to the religious belief which they had been taught by their parents, and the court said:

"We must decide whether the requirement of participation in such a ceremony, exacted from a child who refuses upon sincere religious grounds, infringes without due process of law the liberty guaranteed by the Fourteenth Amendment."

After discussing the legitimate right of the propagation of belief as held in Cantwell *v.* Connecticut, supra, the court continued:

"But the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellow-men. When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good? To state the problem is to recall the truth that no single principle can answer all of life's complexities. The right to freedom of religious belief, however dissident and however obnoxious to the cherished beliefs of others—even of a majority—is itself the denial of an absolute. But to affirm that the freedom to follow conscience has itself no limits in the life of a society would deny that very plurality of principles which, as a matter of history, underlies protection of religious toleration.

* * *

"* * * The religious liberty which the Constitution protects has never exeluded legislation of general scope not directed against doctrinal loyalties of particular sects. Judicial nullification of legislation cannot be justified by attributing to the framers of the Bill of Rights views for which there is no historic warrant. Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. The necessity for this adjustment has again and again been recognized. In a number of situations the exertion of political authority has been sustained, while basic considerations of religious freedom have been left inviolate. (Citing cases) In all these cases the general laws in question, upheld in their application to those who refused obedience from religious conviction, were manifestations of specific powers of government deemed by the legislature essential to secure and maintain that orderly, tranquil, and free society without which religious toleration itself is unattainable. * * *"

It is true that Mr. Justice Stone dissented, but his dissent was apparently based on the theory that requiring an affirmative act of saluting the flag was a compulsory expression of a belief which did not coincide with the true belief of the individual and, indeed, violated his religious conviction and was not of sufficient importance to justify the exercise of the police power of the state. In the present case, defendant is not required to refrain from expressing his religious convictions either orally or by the means of printed literature. He is not required to affirm his belief in anything which contradicts these convictions. He is required merely to refrain from *selling* this literature without paying the regular license tax required of all other persons who peddle literature of any nature within the city of Casa Grande. We might well call defendant's attention to the language of the Master regarding the tribute money. Matt. 22:15-21.

Probably the latest and best statement of the general rule to be applied in cases of this kind is found in City of Manchester *v.* Leiby, 117 Fed. (2d) 661, in the following language:

"* * * The civil authority can never concede the extreme claim that police regulations of general application not directed against any sect or creed—however widely the regulations may be accepted as being reasonable and proper—are constitutionally inapplicable to persons who sincerely believe the observance of them to be 'an insult to Almighty God.' (Citing case)"

We are told in the Scripture that salvation is free. Rev. 21:6; Rev. 22:17. So long as defendant seeks to inculcate his ideas of the proper pathway of salvation "without money and without price", he will not violate the ordinance in question. If, however, he insists upon the right to commercialize his propaganda, he must comply with the law or pay the penalty, and this in no way violates the state or federal constitution guaranteeing the free exercise of religion.

If the defendant still feels that he faces a painful conflict between the call of conscience and man made law, he might read the Apologia and Crito and he would find how one of the wisest of mankind, resolved the difficulty in a way which has stood the test of the moral judgment of mankind for over two thousand years.

The judgment of the superior court of Pinal County is affirmed.

ALFRED C. LOCKWOOD,
Chief Justice.

Concurring:

A. G. MCALISTER, *Judge.*
HENRY D. ROSS, *Judge.*

[October 20, 1941.]

[Citation for above opinion: 118 P. 2d 97.]

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 966

CHARLES JOBIN, *Appellant,*

v.

THE STATE OF ARIZONA

APPEAL
FROM THE SUPREME COURT OF ARIZONA

APPELLANT'S BRIEF

HAYDEN C. COVINGTON
Attorney for Appellant

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 966

CHARLES JOBIN, *Appellant,*
v.
THE STATE OF ARIZONA

APPEAL
FROM THE SUPREME COURT OF ARIZONA

APPELLANT'S BRIEF.

Opinions Below

The opinion of the Supreme Court of Arizona is reported in 118 P. 2d 97 and is printed in the Record. (R. 46) It appears also as an appendix to the printed jurisdictional statement filed herein. The trial court did not write an opinion.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Timeliness

The judgment of the state court of last resort (Arizona Supreme Court) was rendered and entered of record on October 20, 1941. (R. 55) A motion for rehearing was duly and timely filed. On December 11, 1941, the Arizona Supreme Court overruled the motion for rehearing. (R. 55) The judgment of said highest court became final on December 11, 1941. The petition for appeal was duly filed and presented within three months from December 11, 1941. This Court noted "probable jurisdiction" on March 16, 1942. R. 62.

The Statute

The legislation, constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Casa Grande, known as ordinance number 101. Material parts of said ordinance read as follows:

> "Section 1. It shall be unlawful for any person . . . to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance . . . and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. . . .
>
> "Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande. . . . All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

(See Record, page 2.) The entire ordinance appears in the record at pages 2 to 8.

Statement

FACTS

The facts in this case are simple and undisputed. Several witnesses testified for the State concerning the activity of appellant and their dealings with him.[1]

The appellant also testified. (R. 30) The facts as established by the evidence may be fairly summarized as follows, to wit:

Appellant is a regularly ordained minister of Jehovah God, and is known as one of Jehovah's witnesses. On August 15, 1940, he was going from house to house in the City of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various Biblical records on a phonograph, with approval of the householder, and by distributing printed books, pamphlets and leaflets which set forth his views as to the meaning of the Bible prophecies. The method of distribution of these printed publications was as follows: At conclusion of his playing of a phonograph record, appellant would invite the householder to receive one or more of the books or pamphlets and to contribute a small sum to aid in printing and distributing more like literature. Whenever a householder did not desire to receive a book or booklet he left a small leaflet summarizing some points of the Bible message which he preached. In at least two cases he delivered a copy of one of the printed books and received from each of the householders a contribution of twenty-five cents. Appellant admitted that he was offering and delivering said literature in like manner regularly in the City of Casa Grande and elsewhere, and also that in some cases when householders were not in posi-

[1] A. L. Hoffman (R. 14), Connie Richerson (R. 15), Mrs. Hazel Irene Bonebrake (R. 20), Charles Richardson (R. 23), and Guy J. Baker. R. 27.

tion to make a money contribution and desired and promised to read the literature carefully, to such persons he gave a book or a pamphlet free of charge. Appellant also testified that he did this work because he believed it was his God-given duty to do so. He admitted that not only had he not applied for a license under the ordinance above set forth, but that when the city marshal told him that he was violating the ordinance, he insisted that he had a right to do the work and refused to purchase a license. On behalf of appellant it was contended that he could not be compelled to take out a license as a condition precedent to performing such work in the manner above described because (a) it violated his right of freedom of press, and (b) his freedom to worship Almighty God, as guaranteed to him by the Federal Constitution.

Appellant, one of Jehovah's witnesses, is an ordained minister of Almighty God, preaching the gospel of the Kingdom of Jehovah God, The Theocracy, and as such he is consecrated to bear public witness thereto. At the time of his arrest he was preaching the gospel of God's Kingdom from house to house (Acts 20:20), following in the footsteps of Christ Jesus and His apostles (1 Peter 2:9, 21), by distributing Biblical literature in the manner above described.

Appellant's sole purpose and objective in thus distributing said literature was to preach said gospel message and thus to provide to others the wholesome and beneficial information contained in said literature. His objective was not a commercial one; he was not doing the work for pecuniary gain for himself or for the publishing organization that provided said literature for him to circulate. His inviting and accepting money contributions from willing recipients of the literature was definitely *incidental* to appellant's primary aim and purpose.

The aforesaid literature thus distributed by appellant and by all other of Jehovah's witnesses relates exclusively to Biblical matters, explaining God-given prophecies recorded centuries ago in Holy Writ and which are now being

fulfilled, and showing how, according to the Bible, the time is near when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16:13-16); which destructive ACT OF GOD shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the universe, to bring peace, joy, prosperity, happiness and endless life to all persons on earth who are accounted worthy to survive that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth. Contents of said publications are, in part, admittedly, a vigorous attack upon religion as practiced today and at all times since man has been upon earth, but ALSO such contents clearly set forth the *true distinction* between all religion, on the one hand, and, on the other hand, the true worship (or service) of Almighty God and His Son Christ Jesus, thereby exposing religion as a snare to be shunned by the upright, and proving that *no* religion is in any way related to or a necessary part of the true worship of Almighty God and His King Christ Jesus. That no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and does not in any way interfere with the governments of various nations of earth.

The public method of preaching the gospel employed by appellant is following exactly in the footsteps of the Lord Jesus Christ, who also taught *publicly* and from house to house.—Luke 8:1; Acts 20:20.

The undisputed evidence showed that appellant is not a peddler of goods, wares or merchandise in the sense ordinarily understood or intended by the terms of the ordinance, because he is an ordained minister of Jehovah God, preach-

ing the gospel from house to house as well as on the public ways.

The Supreme Court of Arizona in its opinion also stated the facts substantially as above. R. 46.

HISTORY OF PROCEEDINGS BELOW

Appellant was arrested and charged in the municipal court with violation of the aforesaid ordinance, and on trial was convicted for a violation thereof. He duly appealed to the Superior Court of Pinal County, Arizona. (R. 44) In due time his said case was tried *de novo* to a jury before Levi S. Udall, Judge of the Superior Court, resulting in a verdict of guilty and assessment of a fine of $50, in default of which he was ordered committed to jail for fifty days, and thereupon duly and timely appealed said conviction to the Supreme Court of Arizona. (R. 46) Errors pertaining to his conviction were duly assigned in the Supreme Court of Arizona, according to the rules of said court, and the matter was duly and regularly heard, and on October 20, 1941, the judgment of the Superior Court of Pinal County was affirmed. (R. 55) Thereafter appellant's motion for rehearing was overruled on December 11, 1941. R. 55.

Federal Questions Presented

In the municipal court, by motion to dismiss and in the Superior Court by motion to dismiss and motion for instructed verdict filed at the close of all the evidence (R. 38), and in the Supreme Court of Arizona by assignments of error and brief, appellant duly and timely raised in the manner required by law certain Federal questions; contending in each of said motions that the ordinance in question as construed and applied deprived him of his rights of freedom to worship ALMIGHTY GOD as by Him commanded in His written Word and according to dictates of appellant's conscience, and of freedom of speech and freedom of press, contrary to the "due process" clause of the

Fourteenth Amendment to the United States Constitution. See Opinion, R. 46.

Each of these contentions was overruled by the municipal court, by the Superior Court, and by the Arizona Supreme Court. The Supreme Court of Arizona finally passed upon each of said Federal questions or assignments of error attacking the validity of the ordinance and held the legislation valid and constitutional as construed and applied. (R. 46) Each of the aforesaid grounds presenting Federal questions has been brought to this Court by specific assignments of error contained in the petition for appeal duly and timely filed herein.

Specification of Errors to Be Urged

The Supreme Court of Arizona committed reversible error in failing to hold that—

1. The ordinance as construed and applied by the courts below unreasonably and unlawfully denies and abridges appellant's right of freedom to worship Almighty God as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

2. The ordinance as construed and applied by the courts below unreasonably and unlawfully denies and abridges appellant's right of freedom of press, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

Points for Argument

ONE

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of his right of freedom to worship Almighty God, JEHOVAH, as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void, in that it unreasonably and unlawfully deprives appellant of his right of freedom of press and freedom of speech, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

Summary of Argument

A proper and judicial construction of the ordinance in question would necessarily have excluded appellant's activity from the terms thereof, because appellant was admittedly an ordained minister of Almighty God, preaching the gospel by distributing literature and simultaneously receiving money contributions.

The opinion of the court is to the effect that had appellant not received money contributions he would not have been within terms of the ordinance, and that by reason of "making sale" of literature he was properly constituted a

peddler, subject to payment of the license tax provided for "peddling" within the city, and that therefore his constitutional rights of freedom of worship and freedom of press were not denied him in the circumstances of this case.

The liberty of the people to exercise their right of freedom of speech, of press and of worship depends not upon whether money contributions are received to defray the expense of such activity. As to the construction of the ordinance and what activity the word "peddler" does or does not include, this Court is not concerned. The Arizona Supreme Court's interpretation is final in that regard. However, this rule does not enjoin this Court from determining whether the ordinance as construed by the Arizona Supreme Court violates the Federal Constitution.

If it is found that the admitted exercise of freedom of press and of worship is directly and unlawfully burdened by this ordinance, it is the duty of this Court to reverse the judgment of the courts below. *Henderson* v. *New York,* 92 U. S. 219, 237.

The effect of the decision of the court below is to *amend* the Constitution of the United States in a manner contrary to law and reasoning expressed in the applicable opinions of this Court. The Arizona Supreme Court has *grafted* a new theory, entirely foreign to American life, onto constitutional law of the nation—which should be removed and eradicated by this Court before it reaches more devastating proportions and consequences. The court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, i.e., if money was accepted for the literature distributed that such transaction took the matter beyond the reach of the shield of the Federal Constitution's Fourteenth Amendment.

Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against ordinances such as this if he *gave away* printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The

claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one. Through it many have grown wealthy. They claim and are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, as the appellant here, by constantly and continuously bringing printed matter on subjects of great importance and benefit to the attention of the public through "press activity" is entitled to let those receiving such information aid in keeping the 'good work alive and going' by contributing a small sum with which to print more like literature.

It is a ridiculous stalemate to hold that one must 'go bankrupt' by forced "free" (i.e., *gift*) distribution of literature in order to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money contributed by some who accept literature is only *incidental* to appellant's main activity. It is a means to an end, to wit, further proclamation of the Kingdom message of Almighty God.

Manchester v. *Leiby*, 117 F. 2d 661, relied on by the Arizona Supreme Court, is not in point and does not govern here, because it concerned only an ordinance requiring "identification" and not a permit or license. That *Manchester* v. *Leiby* opinion is repugnant to the Constitutional and applicable opinions of this Court. (See *Herder* v. *Shahadi*, 14 A. 2d 475, where an identical ordinance was outlawed.) Denial of certiorari (61 S. Ct. 838) does not mean that this Court approved the reasoning or the holding of the First Circuit Court of Appeals. Cf. *Bowden et al.* v. *City of Fort Smith, Ark.*, No. 314 October Term 1941, certiorari *denied* Oct. 13, 1941 (62 S. Ct. 99), and thereafter on March 16, 1942, certiorari *granted*; see, also, *United States* v. *Carver*, 260 U. S. 482, 490.

An ordained minister of Jehovah God and of the Lord

Jesus Christ cannot be licensed to perform acts of worship (i.e., *service*) of the Creator. Furthermore, the ordinance does not mention or contemplate ministers. The constitutional "right" to serve Almighty God cannot be taxed or licensed. It is not a "privilege" merely, but an inherent right. Such *right* does not spring from the Constitution, is not *created* by the Constitution. Such existing inherent *right* of every inhabitant of this land is shielded by the Constitution against hostile invasion by the State and even by Congress.

As construed, the Casa Grande ordinance *licenses* acts of worship; that is to say, preaching the gospel by dissemination of Biblical information in printed form. To permit such taxing or licensing is authorizing and encouraging an unlawful joinder of "state and church".

The Arizona Supreme Court's straitened view of what constitutes an "ordained minister" and "preaching the gospel" prevents that court from discerning how appellant's acts are safeguarded under the protecting shield of the Federal Constitution against all sorts of encroachment by license, especially when the court below found that appellant was 'preaching the gospel as a regularly ordained minister'.

That court's straitened view seems to stem from the private opinion of its members the appellant's challenged activity is "commercial" simply because it is unlike commonly recognized practices of the religious clergyman.

As long as appellant's practice does not infringe the law of morals or the right of property of others, the judiciary as well as any administrative or legislative agency is absolutely estopped from invading the field of opinion and practice to say that a given activity is not in fact an act of worship protected under the constitutional shield.

ARGUMENT

ONE

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of his right of freedom to worship Almighty God, JEHOVAH, as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

Freedom to worship Almighty God according to dictates of one's own conscience and as commanded by the Creator in His written Word is one of the rights secured by the Fourteenth Amendment against abridgment by the state. *Cantwell* v. *Connecticut*, 310 U. S. 296.

The undisputed evidence is that appellant was and is an ordained minister of Jehovah God, and that his *way* of worshiping Almighty God is to preach the gospel from house to house and on the streets by distributing literature explaining God-given prophecies of the Bible.

Preaching of the gospel by him *in this manner* is not for the private, personal benefit of the individual so preaching, or the benevolent corporation printing the literature distributed by said individual. On the contrary, the purpose, aim and effect of his dissemination of such information through distributing said literature is to enlighten and benefit persons willing to receive and study that literature.

The undisputed evidence shows that no one connected with the printing or distributing of the literature receives or makes any private, pecuniary profit; and that the entire activity is strictly non-commercial, non-profit and non-competitive in nature and aim. And although money contributions are received by persons distributing the literature to

aid in defraying cost of producing and distributing more like literature, such acceptance of contributions is wholly and purely *collateral, incidental,* secondary.

The undisputed evidence shows that no profit or personal gain results, and much literature is given away free by the distributors on condition that recipients read and study same.

Neither appellee nor the courts can say that this is not a proper *way* to worship Almighty God. Jehovah God alone judges His servants, as it is written:

> "Who art thou that judgest another man's servant? to his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."
> THE BIBLE, Romans 14:4

Also, Thomas Jefferson, in his preamble to the Virginia Statute for Religious Freedom, correctly recites—

> "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty"

and then declares

> "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

The foregoing true rule was quoted with approval in *Reynolds* v. *United States,* 98 U. S. 145, 162.

Also, in *Commonwealth* v. *Lesher,* 17 S. & R. 155, the Chief Justice of the Supreme Court of Pennsylvania said that the right of conscience is—

"A right to worship the Supreme Being according to the dictates of the heart. To adopt any creed or hold any opinion whatever on the subject of religion; *and to do or forbear to do any act* for conscience' sake, the doing or forbearing of which is not prejudicial to the public weal." [Italics added]

As long as the act of worship by an inhabitant of this land—be he a clergyman, or this appellant, or any other person—does not infringe the law of morals or the right of property of others, the judiciary or any administrative agency is precluded from invading the field of opinion and right practice to say that a given activity is not in fact an act of worship, or "preaching the gospel".

To "preach" means to proclaim a message.

"Preaching the gospel of the kingdom of God" means proclaiming to others the Scriptural truths of and concerning Jehovah God and His kingdom, The Theocracy, under Christ Jesus.

To be *ordained* thus to minister or serve merely means to be appointed, by the proper authority, to a position or office to perform duties specifically assigned. Jehovah's witnesses being selected by Almighty God, JEHOVAH, it follows that Jehovah is the authority who ordains the servant or minister, as it is written at Isaiah 42:1; Isaiah 43:10-12; Isaiah 61:1-3; John 15:16. Those and other Scriptures clearly state the commission of authority given by Almighty God through His Son Christ Jesus to persons on earth who are servants, or ministers, of Jehovah.

Since Jehovah's witnesses operate in a legal and orderly way through their corporate representative the Watchtower Society, they also possess an earthly ordination.

From the foundation of the United States this country has been recognized and declared by this Court to be "a Christian nation". *Holy Trinity Church* v. *United States*, 143 U. S. 457. This means that its people endeavor to follow in the footsteps of the Lord Jesus Christ. All followers of

the Lord are duty bound to obey the law of Almighty God and to follow in the footsteps of His Son, Christ Jesus. (Psalm 40:8; 1 Peter 2:9, 21) The Lord Jesus set the only example to follow when He said: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) It is written of Him that He went throughout every city and village teaching and preaching the kingdom of God. (Mark 6:6; Luke 8:1) See, also, Matthew 10:7, 12-14. Jesus and His apostles taught publicly.—Luke 13:26; Acts 20:20; see also Proverbs 1:20, 21.

A minister of Jehovah God, following in the footsteps of Jesus, is a witness for Jehovah God, viz., one of Jehovah's witnesses. 'Ye are my witnesses, saith JEHOVAH, that I am God.' (Isaiah 43:10-12) Jehovah's witnesses are commanded by Almighty God to preach, as it is written at Isaiah 61:1, 2, to wit:

> 'The Spirit of JEHOVAH GOD is upon me; because JEHOVAH hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of JEHOVAH, and the day of vengeance of our God; to comfort all that mourn.'

Jesus said that He came into the world for only one purpose, namely, to bear witness to the truthful promise of Almighty God to set up His Theocratic Government to rule the entire earth in righteousness. (John 18:37) According to Matthew 24:14 Jesus commands His followers thus: "This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." Jehovah's witnesses are commanded thus to proclaim His written judgments against "Christendom" 'publicly and throughout every city until the cities are desolate'.—Isaiah 6:11.

To enable appellant (and each one similarly bound in covenant with the Creator) thus effectively to preach the

gospel from house to house throughout the city he uses pamphlets, magazines and books which contain the Bible message. The content of the pamphlets he distributed has been heretofore described. That literature he employs as a substitute for talking or sermons. It is more effective because it can be and is studied by recipients in the quiet of their homes, at their own convenience. Thus much time of both recipient and preacher is saved and more people are served. Appellant's taking of money voluntarily contributed by some who accept literature is *incidental* or collateral to his primary aim and purpose to disseminate information to benefit every person willing to receive such.

Appellant refused to apply for a license because he regarded himself as sent by Jehovah God to do His (the Creator's) work and verily believes that such application *by him* would be an act of disobedience to Jehovah God that would result in his (appellant's) everlasting destruction at the hand of Almighty God.

God's law and the requirements of the covenant into which He has taken His ministers, such as appellant, are supreme. (Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7) Neither human creatures nor human powers can set aside the requirements of the law of Almighty God, nor prevent the individual conscientiously to obey the God-given mandate. Nor can such prevention be accomplished by mob violence or by laws mischievously framed or misapplied by ill-advised men. (Cooley, *Constitutional Limitations*, 8th ed., p. 968) When confronted with inconsistent demands of the two, Jehovah's servants adopt the answer He provided, to wit, "We ought to obey God rather than men." (Acts 5:29) Appellant and other of Jehovah's witnesses desire life, which comes only from Almighty God to those who are wholly obedient to His perfect law. (Psalm 36:9; John 17:3) 'The law of JEHOVAH is perfect, . . . the statutes of JEHOVAH are right, . . . the commandment of JEHOVAH is pure.'—Psalm 19:7, 8.

Jehovah's witnesses, including appellant, are ambassa-

dors for Jehovah's Theocratic Government under the Lord Jesus Christ. (2 Corinthians 5:20; Ephesians 6:20; see also Jeremiah 49:14; Obadiah 1) Hence the State does not and can not have jurisdiction to intervene by application of law or otherwise to encumber, regulate or interfere with the carrying out of their mission as such ambassadors *in the manner* prescribed and directed by Almighty God, JEHOVAH, in His written Word. Consequently appellant cannot apply for a permit or license without violating his conscience and the covenant which binds him to perform the commands of Almighty God. Jehovah says that covenant-breakers are worthy of death. (Romans 1:31, 32) Furthermore, appellant cannot discontinue preaching the gospel as commanded by Almighty God, and he must continue irrespective of persecution (2 Timothy 3:12), or, otherwise, suffer everlasting destruction at the hand of the Most High God, whom he has agreed to obey. (Ezekiel 33:8, 9; Acts 3:22, 23; Jeremiah 26) The law of Jehovah never changes. (Malachi 3:6) He saves those who love and serve Him, but all the wicked and all who forget Him He will destroy. (Psalm 145:20) Jehovah keeps all His promises.—Isaiah 46:11.

It would be an insult to Almighty God for one of His servants to apply to another human creature for a permit or license to do that which God has commanded His servant to do under pain of everlasting death for refusal or failure so to do.

'Render to Caesar'

The court below *privately* interprets Matthew 22:15-21 to mean that an ordained minister of Jehovah God must stultify his conscience by submitting to the licensing of activity specifically commanded to His ministers by Almighty God in His written Word.

By invoking the counsel given by the Lord Jesus Christ (Matthew 22:15-21), the Arizona Supreme Court thereby judicially brings itself within the purview of the *entire* law

and commandments given by THE Lawgiver (Isaiah 33:22), JEHOVAH GOD, and within the jurisdiction of His appointed and acting Judge, Christ Jesus.—John 5:22, 27.

Almighty God's own interpretation does not support the construction given that Scripture by the Arizona Supreme Court.

On the contrary, said court's construction thereof conflicts with, contradicts, the Creator's own interpretation, and is in direct conflict with His written law, which is supreme.

> "No external authority is to place itself between the finite and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."
>
> *Constitutional Limitations* (Cooley)
> 8th ed., p. 968

> "... Divine Providence ... hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, and *they are to be found only in the Holy Scriptures. ... no human laws should be suffered to contradict these.*" [Italics added]
>
> Blackstone, *Commentaries*
> Chase 3d ed., pp. 5-7

The court below wrongly justified appellee's invasion of appellant's right, by holding that "a preacher" must pay a license tax when he elects to preach by disseminating printed information on the streets and simultaneously receives money contributions to carry forward such work.

Appellee's argument, in effect, interprets *privately* (i.e., for appellee's *purpose* rather than for the purpose

of the Teacher, Christ Jesus) the language of the Lord Jesus—'Render to Caesar things that are his, and to God things which are His' (Matthew 22:21)—to mean that a minister under contract with *the Creator* can be required to violate that contract and his conscience by conforming to the will of *a creature* (i. e., the State) through asking for and obtaining a license before performing acts which *the Creator* in His written Word commands His ministers to do. Because this direct burden violates God's law it cannot be properly deemed one of the demands of "Caesar" to be complied with. *Private* misinterpretation of the Scriptures is 'wresting the Word of God' (2 Peter 3:16); for "no prophecy of the scripture is of any private interpretation". —2 Peter 1:20.

By recording the course of action of His faithful ministers (Hebrews, chapter 11, and other Scriptures), Almighty God has made manifest His interpretation, i. e., the true construction of the Master's words (Matthew 22:21) concerning the obligation of all persons of good-will toward Almighty God with respect to conflicting illegal and wrongful demands of "Caesar". The rule followed by every sincere servant of Jehovah and of Christ Jesus is that such servant willingly and joyfully conducts himself in an upright manner, obeying every law of the land which is not in conflict with JEHOVAH'S law, which is supreme, eternal. This position is exactly like that approved by Blackstone and Cooley. See Blackstone *Commentaries* (Chase, 3d ed.), pages 5-7; Cooley, *Constitutional Limitations*, 8th ed., page 968. As to human demands that conflict with the Creator's perfect commandments to His ministers, the God-given rule is that announced by Jesus Christ's apostle Peter: "We ought to obey God rather than men." "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." —Acts 5:29; Acts 4:19.

True construction of this Scripture (Matthew 22:15-21) by the Lord Jesus Christ Himself is provided in the Sacred

Record, showing unmistakably His own conduct when demanded by the authority of Caesar to discontinue *preaching of the gospel.* The master refused the demand. He emphatically rebuked His accusers, and as a consequence was put to death for His refusal to violate the law of Almighty God.

His apostles, following boldly in the course of Jesus Christ, were similarly arrested and commanded to discontinue *preaching of the gospel;* were mobbed, threatened and beaten for refusing to cease *preaching;* in court were charged with 'turning the world upside down' (Acts 17:6) and advocating a government the king of which is 'one Jesus'. (Acts 25) As to Jesus' disciples when before the courts under such charge it is written (Acts 5:17-41) that they openly said, "We ought to obey God rather than men." Thereafter, as it is written concerning them, "daily in the temple, and in *every house, they ceased not* to teach and preach Jesus Christ." (Acts 5:42) Thus is shown the *true construction* to be placed upon Matthew 22:15-21 as those words of the Master (spoken by Him to His enemies) relate to the God-given duty every ordained minister of Almighty God is obligated to perform in *preaching the gospel* from house to house.

"Freely Give"

The record and the opinion below show that appellant was generous and liberal while preaching the gospel. Appellant offered the literature to every one whom he visited. From some persons who accepted literature he received money contributions, and as to others, "if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge." (Opinion, Arizona Supreme Court.) Thus is shown again that appellant's object was not a commercial one, not a purpose to accumulate pecuniary gain, and not a purpose under which the gospel message was withheld from anyone unable to contribute money to aid in carrying forward appellant's work of preaching.

Jesus Christ's apostle, Paul, defining the principle of God's law expressed in the Scriptures cited by the court below (Revelation 21:6; Revelation 22:17), said that God's minister has a right to expect and accept contributions from any to whom he provides the gospel message. See 1 Corinthians 9:3-27. This is corroborative of the words of Jesus Christ, who said, "The workman is worthy of his meat [maintenance]."—Matthew 10:10, *King James Version* and *Emphatic Diaglott*.

To permit or to encourage application of this type of ordinance to the activity of preaching the gospel is to allow the state to *regulate the church*, which would ultimately permit politicians and others to establish through the state a *state religion*, or through license or taxation to suppress and destroy freedom to worship Almighty God. This would be effected by licensing or taxing the followers of Jesus Christ. Thus the people of America would be pushed back into the miserable condition of intolerance, lethargy and indolence of the dark ages from which founders of this "land of liberty" fled during the reign of King George III. All *tendencies* to accomplish a joinder of "church and state", either directly or indirectly (as attempted here against appellant), should be "nipped in the bud". The sedulous avoidance by America of any move toward joinder of "church and state" is discussed in *The Encyclopedia Americana*, Vol. 6, pp. 660, 657-659; and in the *Columbia Encyclopedia* (Columbia University Press). See *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

Requiring any minister of Almighty God to pay a tax before he preaches by disseminating God's message in printed form (and simultaneously receives money contributions to aid such work) conflicts directly with the law of Almighty God, as well as with the Federal Constitution, because it is a *direct burden*.

A minister of the gospel cannot be licensed to *perform acts* of worship of Almighty God. Furthermore, the ordinance does not mention or contemplate ministers.

The constitutional *right* to serve Almighty God cannot be taxed or licensed. Under existing *American* law, serving God the Creator in conformity with His written commands is not a "privilege" merely, but a *right*.

As construed, the ordinance licenses *acts* of worship; that is to say, preaching the gospel in obedience to God-given command by distributing literature explaining the Bible. To suffer or permit such taxing or licensing is to authorize and encourage an unlawful joinder of "state and church".

The public street is the natural and proper place to preach the gospel *in the manner* done by Jehovah's witnesses. Here, even more particularly, appellant's *way* of worship by preaching the gospel *from house to house* is equally proper. *Schneider* v. *State*, 308 U. S. 147.

Wholly *incidental* to appellant's main activity of preaching the gospel is his taking of money contributions. His activity is not *aimed* or designed to accumulate pecuniary gain. There are no exceptions shown to exist warranting interference, rightly, with appellant's *acts* of worship by application of the ordinance.

The law of Almighty God is supreme, and when a law of the state requires His minister or ambassador to secure a license as a condition precedent to the doing of what Jehovah commands him to do, the minister must obey God and refuse to apply for a license. Should he compromise and secure a license he must suffer everlasting destruction at the hand of Almighty God.

In such a conflicting situation the Constitution requires that ordinances of man (when applied to restrict or prohibit harmless and beneficial *acts*) yield to conscience of the individual molded by Jehovah God and His perfect law.

Admittedly, no clergyman who represents any of the respective religious organizations that function constantly within Casa Grande has ever been required to comply with the ordinance. When such clergyman, in pursuit of

his ecclesiastical profession, receives money from parishioners upon whom he calls at their homes to supply to them prayer books, candles, or other religious paraphernalia commonly and regularly so provided by clergymen he thereby does not qualify as a peddler, subject to being licensed under this ordinance.

Freedom of conscience and of worship are not limited to right of establishment, maintenance and use of an edifice in which to sermonize or from the pulpit of which to harangue the people with vain babblings of politics, society or science falsely so called. That constitutional liberty includes the right of every inhabitant of this land to teach and practice Bible truths by following in the footsteps of Jesus Christ. From *Watson* v. *Jones*, 80 U. S. 679, 728, we quote:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

The literature in question relates exclusively to Biblical matters, it explains God-given prophecies recorded centuries ago in Holy Writ and which are now being fulfilled. It shows how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16:13-16); which destructive *act of God* shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the earth, to bring peace, joy, prosperity, happiness and endless life to all survivors of that most ter-

rible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth in obedience to His Government under Christ Jesus.

No part of the content of such literature advocates overthrow of government by force or violence or by unlawful means, nor does it in any way interfere with the governments of various nations of earth, in regard to every one of which governments Jehovah's witnesses are strictly neutral.

Thus it can be readily seen that the literature does not relate to any commercial or selfish subject matter. See R. 34, 36, 37.

The activity of Jehovah's witnesses in demonstrating this literature in the manner that they do is not a competition with any business of the city's local merchants, whom the ordinance is obviously designed to protect.

It is the misconstruction and misapplication of the ordinance which makes it unconstitutional. The undisputed evidence shows that press activity and acts of worship have been encroached upon unlawfully and that petitioners' have been thereby deprived of their liberty constitutionally secured against State invasion.[2]

This type of ordinance has been repeatedly held not to apply to the activity of Jehovah's witnesses because they are ordained ministers of Almighty God, preaching the gospel of His Kingdom. Their taking of money contributions is *incidental* to their main activity and therefore does not constitute peddling of merchandise. Obviously and undeniably, *their* use of the printing press as an adjunct by means of which the gospel message is made suitably and conveniently available to persons willing to receive the same

[2] *Yick Wo* v. *Hopkins*, 118 U. S. 356, 372; *Oney* v. *City of Oklahoma City*, 120 F. 2d 861; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *Poindexter* v. *Grunkow*, 114 U. S. 270; *St. Louis I. M. & S. Ry. Co.* v. *Wynne*, 224 U. S. 354; *Kansas City Sou. Ry. Co.* v. *Anderson*, 233 U. S. 325; *Whitney* v. *California*, 274 U. S. 357; *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535, 545. See, also, *Hague* v. *C. I. O.*, 101 F. 2d 774, 786; *People ex rel. Doyle* v. *Atwell*, 232 N. Y. 96; 25 A. L. R. 107; 133 N. E. 364.

when distributed in printed form renders such manner of *preaching* none the less an activity entirely *outside* of the "other personal activities" rightly placed within taxing or regulatory field covered by ordinary peddlers' and hawkers' ordinances designed exclusively to govern commercial transactions.[3]

Can Invasion of the Right Be Justified?

The remaining question is whether or not such invasion is justified under the exceptions allowed by the Court in *Watson* v. *Jones*, 80 U. S. 679, 728. No such exceptions appear in this record. Therefore the State Supreme Court had no authority to invade appellant's rights by applying this ordinance.

Appellee, the trial court and the Arizona Supreme Court wrongly contend that appellant was engaged in a *commercial* activity. Not only is there no evidence to support such contention, but it is in total disregard of existing evidence that appellant was preaching the gospel, and "did not *sell*" (R. 34), i.e., did not act for a *commercial* objective, did not aim to acquire pecuniary gain for himself as in conducting a trade or business enterprise.

Wholly *incidental* to appellant's main activity of preaching the gospel is the taking of money contributions. Other courts have specifically found that the taking of money contributions is entirely *incidental*, collateral, to the main purpose of preaching the gospel of God's kingdom, THE THEOCRACY.[4]

[3] *Thomas* v. *City of Atlanta* [Ga.], 1 S. E. 2d 598; *Semansky* v. *Stark*, 199 So. 129; 196 La. 307; *Cincinnati* v. *Mosier*, 22 N. E. 2d 418; *State* [South Carolina] v. *Meredith*, 15 S. E. 2d 678; *Donley* v. *City of Colorado Springs*, 40 F. Supp. 15; *State of Iowa* v. *Mead et al.*, 300 N. W. 523. In each of these cases the activity involved was that of Jehovah's witnesses.

[4] *Donley* v. *City of Colorado Springs*, 40 F. Supp. 15; *Zimmermann et al.* v. *Village of London* (Ohio), 38 F. Supp. 582; *State* [S. Car.] v. *Meredith*, 15 S. E. 2d 678; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Semansky* v. *Stark*, 199 So. 129; *Thomas* v. *Atlanta*, 1 S. E. 2d 598; *Cincinnati* v. *Mosier*, 22 N. E. 2d 418; *State of Iowa* v. *Mead et al.*, 300 N. W. 523. In each of these cases the activity involved was that of Jehovah's witnesses.

Therefore it is submitted that the ordinance of the City of Casa Grande should be held unconstitutional as construed and applied because it denies and deprives appellant of his right of freedom to worship ALMIGHTY GOD.

TWO

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void, in that it unreasonably and unlawfully deprives appellant of his right of freedom of press and freedom of speech, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

A

The fact that literature is sold or that money contributions are accepted simultaneously from some persons receiving literature does not deprive distributor of his constitutional protection. To apply the ordinances in question to literature sold likewise makes it unconstitutional.

B

Streets and residences are the natural and proper places where literature containing information and opinion may be effectively sold or distributed.

C

The facts show that appellant is a distributor, not producer (i.e., printing publisher), of literature containing information and opinion protected by the Constitution, and application to him of the ordinance constitutes and is a *direct burden* upon distribution and amounts to a *tax upon a privilege* and right secured by the Federal Constitution.

D

A statute valid and constitutional becomes invalid when enforced or applied in an unconstitutional manner so as to deny and deprive a person of constitutional rights.

E

The decision of the Arizona Supreme Court holding appellant was not deprived of constitutional rights, is not binding on this court relative to the question of whether the ordinance as construed and applied violates the Federal Constitution. A Federal court is bound to determine questions raised under the Federal Constitution upon *its own judgment* irrespective of the holding of state courts.

F

Exercise of the CIVIL RIGHT of "press activity", as distinguished from exercise of PRIVILEGE competitively to transact commercially gainful business, cannot be licensed or taxed because to permit is to confer the 'power to destroy' the CIVIL RIGHT.

G

The ordinance in question is not regulatory in its aim and nature and is not a general taxing law contemplated by the United States Supreme Court in *Grosjean* v. *American Press Co.*, and is distinguished from decisions relied upon by respondent.

The Arizona Supreme Court has manifestly fallen into the same pit of error as did the appellee and trial court when considering the issues involved as a result of an unsuccessful attempt to jump the broad gap between—

a) police power authorizing taxation, license and regulation of sale of ordinary articles of merchandise upon the streets or from house to house, and

b) the occupation or activity of distributing on streets or at homes of the people literature containing information and opinion (simultaneously inviting and accepting money contributions to aid such work), protected by the Constitution against all sorts of State encroachment.

This gap between the two cannot be bridged or leaped over by law.

The Court's entire decision is based upon the false premise that there is no distinction between "selling" *literature* and selling ordinary articles of merchandise.

It is also based on the assumption that the license tax here is one of the ordinary forms of taxation for support of government, when, as a matter of fact, the ordinance, on its face and as construed and applied, constitutes and is a *direct burden through license tax* upon circulation and distribution—the very life of "freedom of the press".

In all fairness to the court and in the interest of aiding the court in protecting the people of Arizona against the assault against civil liberties made by appellee in its argument below under the guise of innocence, this brief is prepared and filed.

Appellee contends that a proper construction of the ordinance and the activity of appellant is that it covers his activity and that said activity is "selling of merchandise" within the meaning of the ordinance. We submit that the weight of authority cited leads to and compels the opposite conclusion. Indeed this is the only construction that can be given it without having the ordinance come into collision with the Fourteenth Amendment. The only way to save the ordinance is to construe it so as not to cover appellant's activity.

Appellee overlooks entirely the reasoning of this Court in *Schneider* v. *State*, 308 U. S. 147, where Mr. Justice Roberts said:

"... Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

In *Hannan* v. *Haverhill*, 120 F. 2d 87, the court said:

"... Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs."

In the case at bar, the license tax provided for, as applied, is not at all different from the tax struck down in the case of *Grosjean* v. *American Press Co.*, 297 U. S. 697, 713-716. There the tax was based on gross receipts of the newspaper with circulation over 20,000 copies per week. Here the ordinance provides for dealers and for license tax for agents selling merchandise. Pamphlets, periodicals and newspapers are included within the meaning of the term "merchandise" by the trial court.

It is a well-known fact (of which this Court will take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as "Collier's", "The Ladies Home Journal," "The Saturday Evening Post" and "Liberty". This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

While casual consideration might lead one to believe that the ordinance in question is one of the 'ordinary forms

of taxation for support of the government', yet a more careful consideration thereof conclusively shows that, according to construction of the Arizona courts, it is adroitly aimed at *circulation* and can be misused to utterly destroy distribution of literature containing information and opinion.

The ordinance is of the common type *prohibiting* peddling and other occupations in the city without a license.

It purports to be a revenue-raising enactment.

Its real aim is, obviously, to *protect* from unwanted competition merchants maintaining locally established businesses. It relates exclusively to commercial enterprises conducted for pecuniary gain. Nevertheless, the ordinance is of the same character as ordinances struck down when applied in other cases where the benevolent, non-commercial, non-competitive activity of Jehovah's witnesses has been involved.

It is a fundamental proposition that freedom of speech, of press and of worship is secured by the due process clause of the Fourteenth Amendment.

The ordinance is not *regulatory* in nature. A licensee having paid the specified fee and so obtained a license would then be free to "peddle" in Casa Grande at any time, in any place, and in any manner, wholly unrestrained by any provision in the ordinance. Manifestly, the power to license conferred thereby is the 'power to destroy'. The licensing authority is arbitrarily and wrongfully vested with the "right" and "duty" to both *let* and *prohibit*.

Streets are natural and proper places for gift distribution or *sale* of literature. In Holy Writ servants of Almighty God are counseled to disseminate right information in such proper places. (See Proverbs 1:20, 21; Luke 13:26; 10:10, 11; 7:11-16.) Restrictions or ordinances such as this Casa Grande ordinance, properly applicable to hawkers and peddlers of ordinary articles of merchandise, are neither appropriate nor available either to prohibit or to regulate

sale or gift distribution of literature on the streets or from house to house. See

Hannan v. City of Haverhill [Mass.],
120 F. 2d 87
Schneider v. State,
supra
Cantwell v. Connecticut,
310 U. S. 296

"As said in *Lovell* v. *City of Griffin*, supra [303 U. S. 444], *pamphlets* have proved most effective instruments in the dissemination of opinion. And perhaps *the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people*. . . . To require a censorship *through license* which makes impossible the free and unhampered distribution [by gift OR SALE] of pamphlets strikes at the very heart of the constitutional guarantees." (Italics added) *Schneider* v. *State*, supra; see, also, *Lovell* v. *City of Griffin*, supra.

The Casa Grande ordinance is used here to encumber "the press" and practically deny distribution. The burden of its provisions falls upon the distributor. It is manifest that the ordinance is *not* regulatory, because one securing a license is then at liberty to go anywhere within the city that he pleases, at any time, and *sell* or give away literature in any manner and without limitation.

A case directly in point is *State of Vermont* v. *Greaves*, 22 A. 2d 497, involving one of Jehovah's witnesses charged under an ordinance identical to the one involved here. The Vermont Supreme Court held that ordinance to be not regulatory, and that as construed and applied the license tax was a direct burden on the exercise of the right of freedom of the press and unlawfully restricted distribution. That court held that for such reasons the ordinance was unconstitu-

tional. We adopt as further argument here the entire opinion by the Vermont Supreme Court.[5]

"Freedom of press" is not confined to distribution of literature free of charge. The constitutional safeguard extends likewise to protect those who *sell* literature, and most certainly includes the right to receive money contributions (tendered by or invited to be given by willing ones receiving literature at the same time) *incidental* to the main activity of preaching the gospel. *Hannan* v. *City of Haverhill*, supra.

In *Commonwealth* [Clearfield, Pa.] v. *Reid et ux.*, 20 A. 2d 841, involving an ordinance very similar to that of Casa Grande, President Judge Keller of Pennsylvania Superior Court said:

> "The historical reference to 'pamphlets' in that [Lovell v. City of Griffin, supra] opinion and in other opinions of that Court (Schneider v. State (Town of Irvington), supra, p. 164; Thornhill v. Alabama, 310 U. S. 88, 97; Grosjean v. American Press Co., 297 U. S. 233, 245-250, etc.) is *not limited to 'pamphlets' which are distributed without cost.* Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the Grosjean case, were not for the most part circulated gratis, but were distributed to subscribers or *sold.*" [Italics added]

See, also, *The Encyclopædia Britannica*, Vol. 20, Pamphlets, pp. 659-660.

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in

[5] See pages 23 to 26 of Petitioners' Brief filed in this Court, cause No. 314, October Term 1941, *Bowden et al.* v. *City of Fort Smith, Arkansas.*

its historic connotation *comprehends every sort of publication which affords a vehicle of information and opinion.*" (Italics added) *Lovell* v. *City of Griffin*, supra.

It is of vital importance to protect the essential liberty of freedom of the press and freedom to worship Almighty God, from every sort of infringement.

Appellant's freedom to worship Almighty God has likewise been abridged and denied by appellee. *Cantwell* v. *Connecticut*, supra.

There are many other cases involving Jehovah's witnesses in which application of ordinances similar to the Casa Grande ordinance has been held unconstitutional.[6]

The case of *City of Blue Island* v. *Kozul et al.* was decided by the Illinois Supreme Court March 17, 1942, reversing a conviction under an ordinance identical to that here involved. That court said:

> "The parts of the ordinance material to the questions here involved are as follows: 'Section 1. Definition of Peddler—Peddlers required to be Licensed. That every person, firm or corporation who shall sell or offer for sale, barter or exchange at retail any goods, wares or merchandise of any kind whatsoever, by traveling from place to place in, along and upon any of the streets of the city of Blue Island . . . whether to regular customers or not, shall be deemed a peddler and shall before engaging in said business, obtain a license as a peddler as hereinafter provided.' . . .

[6] *Commonwealth* [City of Coatesville, Pa.] v. *Schuman* [Schieman] (January 29, 1937), *very specially noteworthy*, 189 A. 503; 125 Pa. Superior Ct. 62; *State* [Fla.] *ex rel. Wilson* v. *Russell*, 1 So. 2d 569, *particularly* opinion of Chapman, J., specially concurring; *State* [Fla.] *ex rel. Hough* v. *Woodruff*, 2 So. 2d 577; *Kennedy* v. *City of Moscow* [Idaho], 39 F. Supp. 26; *Donley* v. *City of Colorado Springs*, supra; *Zimmermann* v. *Village of London* [Ohio], 38 F. Supp. 582; *South Holland* (Village of) v. *Stein*, 26 N. E. 2d 868; 373 Ill. 472; *State of Vermont* v. *Greaves*, supra; *City of Blue Island* v. *Kozul et al.*, ... N. E. 2d ..... (decided March 17, 1942, Illinois Supreme Court).

"The magazines sold by the defendant would come within the term 'goods, wares and merchandise' used in the ordinance. *Village of South Holland* v. *Stein*, 373 Ill. 472. . . .

"Recent pronouncements of the Supreme Court of the United States make it obvious that the ordinance here in question, as applied to the sale and distribution of the magazines and leaflets by the defendant is unconstitutional and a violation of the right of freedom of speech and of the press. *Lovell* v. *City of Griffin, supra; Schneider* v. *Town of Irvington, supra; Grosjean* v. *American Press Co., supra; Cantwell* v. *Connecticut*, 310 U. S. 296, 84 L. ed. 1213; *Hague* v. *C. I. O.*, 307 U. S. 496, 83 L. ed. 1423. . . .

"The ordinance of the city of Blue Island, as applied to the defendant, can not be sustained as a revenue measure. The United States Supreme Court in *Grosjean* v. *American Press Co., supra*, reviews the history of the long struggle which took place in England between the government and the proponents of a free press. The methods anciently used to control the press were censorship, license and taxation. It is obvious that through license and taxation, as well as by censorship, freedom of speech and of the press can be effectively curtailed and even denied. . . . The framers of the first amendment to the United States Constitution were familiar with the long struggle of the press in England to be rid of the license taxes and the stamp taxes imposed by the government to curtail and limit the freedom of the press, and the first amendment prohibits any form of restraint on the publication or circulation of printed matter.

". . . Liberty of circulating is as essential as to the freedom of the press as liberty of publishing. Without circulation the publication would be of little value. (*Ex parte Jackson*, 96 U. S. 727, 24 L. ed. 877.) The license tax in the *Grosjean case* was held invalid be-

cause of its direct tendency to restrict circulation.'

". . . The right to freely print and circulate applies not only to printed matter circulated without charge to the recipients, but it also applies when a charge is made for it. (*Grosjean* v. *American Press Co., supra; Lovell* v. *City of Griffin, supra.*) . . .

"The city contends that in some of the cases cited the ordinance provided for censorship through licenses or permit and gave the certifying officer the power to reject or deny the application at his discretion on consideration of the moral character of the applicant or the nature of his project, whereas, the ordinance of the city of Blue Island did not provide for censorship but gave the applicant a right to a license on payment of the required fee. It can, however, make no difference whether the ordinance provides for censorship through licenses and permit or whether the ordinance merely provides a license fee or license tax on the privilege of publishing and circulating printed matter. In either event the effect is that there is an abridgement of the freedom of the press.

"The publishers and distributors of newspapers, magazines, pamphlets, circulars, books or other printed matter are not immune from the ordinary forms of taxation for the support of the government, but they can not be compelled to purchase, through a license fee or a license tax, the privilege freely granted by the constitution. . . .

"The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island. The defendant's right to a license on the payment of the required fee or tax was absolute. If the defendant paid the $25 for a year, or $4 for a day and so obtained the license she would then have been free to peddle the magazines in the city of Blue Island during the paid license period

at any time, in any place and in any manner, wholly unrestricted by any provision in the ordinance. Her freedom to peddle the magazines would then be as complete as though the ordinance did not exist. The ordinance is purely a fee or tax measure, and under the circumstances in this case its effect is to compel the defendant to pay a fee or tax of $25 per year or $4 per day to exercise a privilege freely guaranteed to her by the constitution of the United States as well as by the constitution of this State. That this ordinance as applied to the facts in this case would operate as a restraint upon the circulation of the magazines in question is self-evident. If the defendant should be unable to pay the required fee or tax, circulation and distribution on the streets of Blue Island was prohibited and denied. *Grosjean* v. *American Press Co., supra.* . . . "

Here, too, the burden is imposed upon the "distribution" or "circulation" end of publication which, under the constitutional protection, is intended to be left unhampered and unrestrained by all forms of license and permit laws. Under the Casa Grande ordinance, every newsboy or other person distributing any pamphlet, book or periodical is required to pay the license fee.

The license fee imposed is *not for the purpose of regulating* and paying necessary expense incidental to use of the streets, as was the *parade* license fee in *Cox* v. *New Hampshire*, 312 U. S. 569. There the fee collected was used in providing policing of *parades*. Here, however, no such aim or purpose exists. Here, ostensibly, the object appears to be *revenue raising*, but, really, the aim, purpose and *effect* or result is destruction of distribution or circulation, because the burden of tax is placed on the distributor.

Suppose a citizen interested in good government found that administration of officials in Casa Grande were corrupt and incompetent, and he desired to print a pamphlet making known such fact for the purpose of effecting

a change of administration. If he prepared such a pamphlet and distributed it, either *gratis* or for a small charge, he would be required to get a license, and on failure to do so could be prosecuted and convicted.

Let us say that Nazis, Fascists and Japs were moving in secret to invade the borders of Arizona, and some good citizen learning this fact printed millions of pamphlets or leaflets for distribution throughout Arizona. In Casa Grande, under this ordinance, both he and every loyal citizen aiding him to distribute such printed matter could be convicted for their failure to pay the tax and secure a license. A modern-day Tom Paine or John Milton could not safely function with his pamphlets in Casa Grande.

The tax here in question directly encumbers and smothers distribution and circulation of literature; and if held to be valid, it could be used to destroy circulation. This is plain enough when we consider that if it were increased to a high degree, as it could be (*Magnano Co.* v. *Hamilton*, 292 U. S. 40, 45, and cases cited), it well might result in completely suppressing both distribution and even publishing to point of destruction.

As our further argument we here adopt in its entirety the opinion of Mr. Justice Sutherland in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-251, and also the statement appearing in *Near* v. *Minnesota*, 283 U. S. 697, 707-716 et seq.

The ordinance is clearly *not regulatory*. The license tax provided for is not a general taxing law for support of government as contemplated by this Court. The ordinance throws the burden upon the pamphleteer or other distributor of limited means and thus stops circulation. A thousand distributors would be required to pay a huge sum to function under the ordinance. Under the same ordinance the one printer for the thousand distributors would be required to pay nothing. The unreasonableness of the ordinance license tax is manifest.

Therefore the argument and contention on the part of

appellee that appellant's main activity is peddling for profit is without support in law or fact and should be rejected.

This Court can take judicial notice of the clearly reasoned opinion of a humble city magistrate of this nation's largest and *greatest* municipality, involving an identical ordinance. Very early New York City's Magistrate Morris Rothenberg discerned and applied the American principles so ably set forth by Chief Justice Hughes in *Lovell* v. *Griffin*, 303 U. S. 444. In *People* v. *Max Banks* (July 20, 1938), 6 N. Y. S. 2d 41, Judge Rothenberg said:

> "I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of *selling a pamphlet on the public streets* and to impose a penalty of fine and imprisonment for violation of the section mentioned.
>
> "In applying the principle laid down in the Grosjean case to the facts in the Lovell case the Chief Justice said:
>
> > 'The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in *Grosjean* v. *American Press Company*, supra, was held invalid because of its direct tendency to restrict circulation.'
>
> "Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the *sale of pamphlets on the streets* has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code [City of New

York] permits free distribution of literature *on the public streets without restriction.* Free circulation depends as much and conceivably more upon the sale than upon free distribution, considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through *sale* defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon *sale* and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid . . . it well might result in *destroying circulation*'." [Italics added]

In *People* v. *Finkelstein*, 2 N. Y. S. 2d 941, also it was held that license tax ordinances of the City of New York very like the questioned license ordinance were unconstitutional as construed and applied to street distribution of literature.

Appellee and the court below cite and rely upon *Giragi et al.* v. *Moore et al.*, 58 P. 2d 1249, 64 P. 2d 819, 301 U. S. 670. This is not in point because there the tax involved was a general sales tax of one percent of gross proceeds of sales or gross income of business of everyone in the state engaged in "newspaper" business. Many other businesses were similarly taxed on different proportions. The tax there involved, as well as that questioned in *Arizona Pub'g Co.* v. *O'Neil*, 22 F. Supp. 117, aff'd 304 U. S. 543, came within the general form of taxes for the purpose of support of government said to be applicable to newspapers in the *dictum* in *Grosjean* v. *American Press Co.*, supra, and in *Associated Press* v. *National Labor Rel. Bd.*, 301 U. S. 103, 133. Such tax was not directed at and was not a direct burden upon distribution of opinion or pamphleteering as such has been applied in this case by the construction placed on the ordinance by the Arizona Supreme Court.

Any attempt to tax the exercise of such right would,

therefore, be a tax on a privilege (distribution or dissemination of opinion) guaranteed by the United States Constitution, and thus be invalid. See *Colgate* v. *Harvey*, 296 U. S. 404; *Crandall* v. *Nevada*, 6 Wall. 35.

Cases relied on by appellee in justifying the decision below involved general taxes and licenses affecting the gross proceeds of newspaper business, which tax and licensing provisions were not directed at, or a direct burden on, distribution of literature, or calculated on the basis of circulation; but which were entirely incidental and collateral thereto.

Here the license tax throws the burden on the distributor and is a direct encumbrance upon circulation.

The license tax here cannot be distinguished from the type of law requiring a permit from a police chief or other authorized official in whom is vested discretion to grant or refuse the permit. This character of law is admittedly unconstitutional. See *Lovell* v. *Griffin*, 303 U. S. 444, and *Schneider* v. *State*, 308 U. S. 147. The same prohibitive result or evil can be and is reached under the license tax law here through increasing the license fee so as to make it impossible for all, except the ultrarich, to exercise constitutional rights guaranteed to everyone. Thus the right of liberty and freedom secured to all by the Constitution would become the prerogative of the wealthy.

Indeed, one might be too poor to pay even the smallest possible license fee that may be fixed, and thus, by reason of his poverty, be refused the rights guaranteed him under the Constitution. The exercise of rights so vital to the maintenance of democratic principles is not and cannot be made dependent upon one's ability to raise sufficient funds wherewith to pay a license tax fee as a condition precedent to the exercise thereof. To thus hold might and would deprive large segments of the population of the guarantee of their freedom. The results would be a substantial dissolution of the rights of the people and a serious impairment of equality of the inhabitants of this land, and would make indigence

a basis for restricting freedom of civil rights.

The ordinance questioned here permits the people, in the exercise of their constitutional rights, to be divided into two classes: one class with worldly riches free to exercise the right of freedom of press and worship according to the dictates of conscience, and another class that is poverty-stricken to the point of being unable to purchase the required license to exercise their vital rights. Thus the ordinance is at war with the Constitution and is a short-sighted blow at the security of the people's liberties.

Laws which make unlawful the bringing of indigents into a state are unconstitutional and void. See *Edwards* v. *California*, 314 U. S. 160, 182-186; 62 S. Ct. 164, 166-170. The principle announced in that case makes such, by analogy, authority for appellant here.

Like "Free Commerce"

The license tax here applied to the exercise of an admitted constitutional right can be likened to the various kinds of taxes that have been knocked down as being unconstitutional burdens upon interstate commerce.

Appellant does not and can not rely upon the interstate commerce clause itself. However, by analogy, appellant's exercise of the rights of "free press" and "worship" is entitled to *equal protection* against any direct-tax burden, even as the right of "free commerce between the states".

The courts have held to be bad taxes and license fees constituting a direct burden against interstate commerce. Such cases, by analogy, show that a similar tax, which directly burdens the exercise of freedom of press and worship, is likewise bad.

This Court has declared often that license-tax laws and peddlers' license ordinances similar to the one here involved are unconstitutional when construed and applied to cover peddlers or agents selling from house to house or on the streets merchandise shipped from another state.

See *Sabine Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 494-496; *Caldwell et al.* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128; and *Real Silk Hosiery Mills* v. *City of Portland et al.*, 268 U. S. 325, 335-336.

In these trying hours this Court will be equally as hasty and astute to protect the rights under the "Bill of Rights" and the Fourteenth Amendment to the Constitution as it is in sustaining the commerce clause, especially when human rights are threatened, as here, with destruction by the direct burdening of circulation and distribution, the very life of "free press".

Appellee says that because the state courts have passed on the validity of this and similar ordinances that this court and other federal courts do not have the right to reach a contrary conclusion or enjoin the enforcement. We call attention to the fact that the New Jersey Supreme Court had passed on and approved the validity of the ordinance involved in the *Hague* case before the injunction suit was brought. This was a basis for an injunction rather than ground for denial. Such a holding constitutes a denial of constitutionally secured "civil rights". (See statement in footnote 23 of the opinion of Mr. Justice Roberts in the *Hague* case.) The courts of the States are not the sole custodians of the Constitution; and when any state court misconstrues the United States Constitution such court's holding is not binding upon any federal court called upon to "redress" the deprivation of civil rights by state courts.

It is a fundamental rule that the question of construction of a statute or ordinance and definition of its terms is for the State courts to determine and when they have construed the enactment such construction is binding upon the federal court. This rule is well settled and does not require citation of authority.

But *where a federal question is involved* the federal courts are not bound by the construction given the statute or ordinance by a state court.

Here a federal question is involved. This federal court cannot be forced to follow the arbitrary ruling of any state court that 'there is no federal question'.

The fact that there is a federal question causes the exception to the above rule. This Court must now determine whether the ordinance is unconstitutional and contrary to the Fourteenth Amendment as construed and applied by appellee.

In proof that the foregoing paragraph correctly states the rule, see *Scott* v. *McNeal*, 154 U. S. 34; *New Jersey* v. *Anderson*, 203 U. S. 483; and *Lindsey* v. *Washington*, 301 U. S. 397.

It has been clearly stated and held by this Court that it is not concerned with characterization or construction of state legislation by the state court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in force by the state in light of the Federal Constitution.[7]

The ordinance is also void because it vests arbitrary and discriminatory power in the licensing authority of the City of Casa Grande. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 372.

It is submitted that the ordinance as construed and applied violates Section 1 of the Fourteenth Amendment to the United States Constitution because it denies and deprives appellant of his right of freedom of the press.

[7] *Corn Prod. Ref'g Co.* v. *Eddy*, 249 U. S. 427; *St. L. & S. W. Ry. Co.* v. *Arkansas*, 235 U. S. 350; *K. City & Ft. Smith Ry. Co.* v. *Botkin*, 240 U. S. 227, 231; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237.

Conclusion

Among the oldest cases on the precise point now before this Court is the one recorded in the Bible book of Acts of the Apostles, chapter 5, beginning at verse twenty-six. Disciples of Jesus Christ were publicly informing the people, disseminating the truths of the Word of Almighty God in obedience to His command. Religionists were grieved and angered because God's truth was being proclaimed. The clergy and other religionists conspired against the publishers of the truth. Those conspirators instigated the arrest of the disciples, who were haled into the judgment hall. A high Roman court then sitting in Palestine heard that case. After hearing the evidence, one of the members of that court, Gamaliel, a learned counselor, arose and, addressing his fellow members of the court and all present, said:

> "Refrain from these men, and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."

This temperate and salubrious principle all right-minded persons always follow.

The Most High God, JEHOVAH, Himself counsels:

> 'Now therefore be wise, O ye kings: be instructed, ye judges of the earth. Serve JEHOVAH with fear,

and rejoice with trembling. Kiss His Son, THE KING Christ Jesus, lest He be angry, and ye perish in the way, for His wrath will soon be kindled. Happy are all they that take refuge in Him.'—Psalm 2: 10-12, *American Revised Version.*

This Court should reverse the judgment of the Arizona Supreme Court and order the appellant discharged, we confidently submit.

HAYDEN COVINGTON
Attorney for Appellant

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 966.

CHARLES JOBIN,

Appellant,

against

STATE OF ARIZONA,

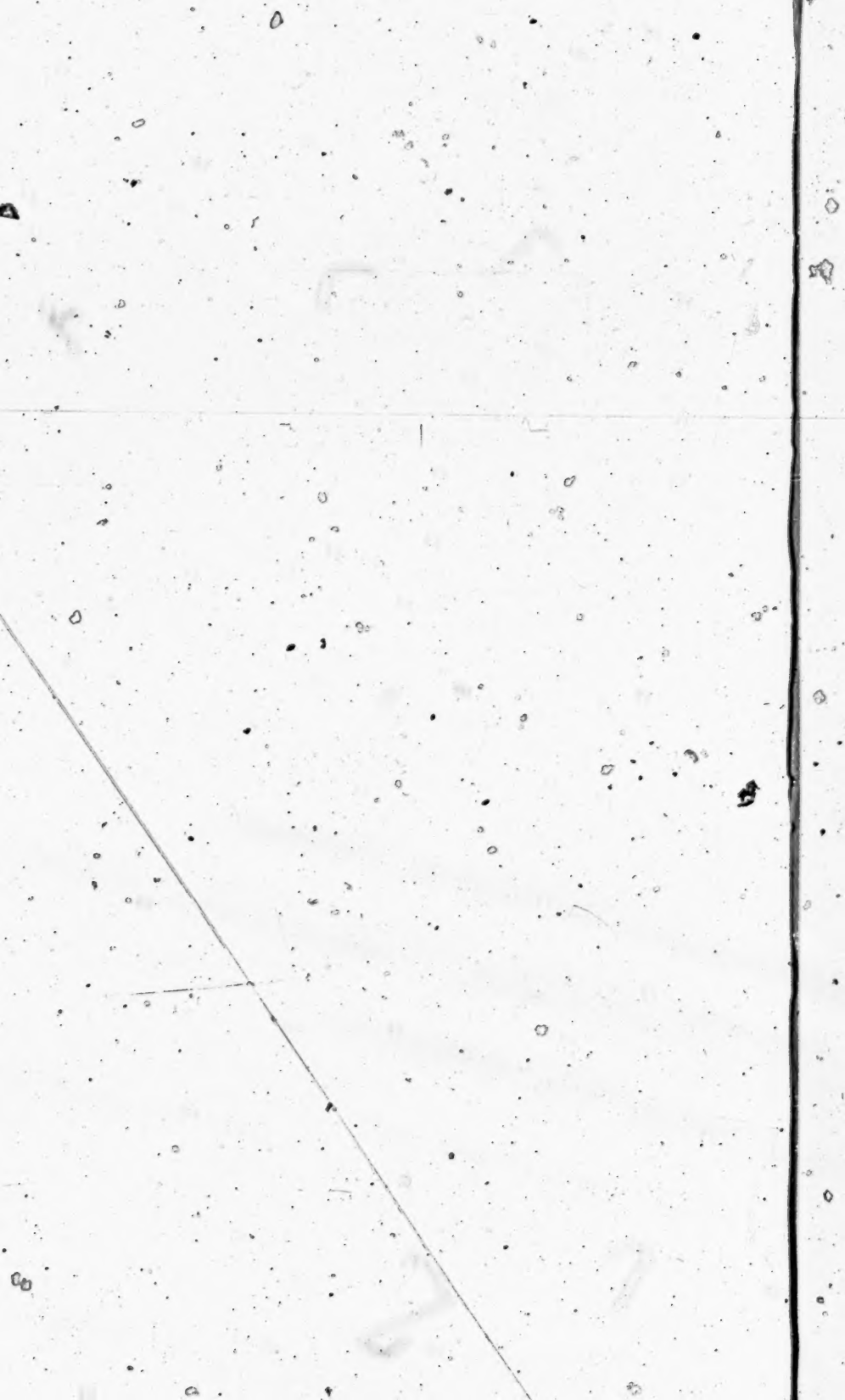
Appellee.

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

AMERICAN CIVIL LIBERTIES UNION
as Amicus Curiae.

OSMOND K. FRAENKEL,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 966.

CHARLES JOBIN,

Appellant,

against

STATE OF ARIZONA,

Appellee.

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

The American Civil Liberties Union is interested in this case and its companion cases *Jones* v. *Opelika,* No. 280, and *Bowden* v. *Fort Smith,* No. 314, because it believes that they present to this Court certain important constitutional problems with regard to the extent to which restrictions may be imposed upon the dissemination of ideas.

The basic question is whether a municipality, under the guise of collecting license fees for the carrying on of various occupations, may require the taking out of such a license and the payment of a fee by any person who distributes pamphlets containing an expression of opinion for which he asks a contribution or a fixed price.

In the instant case an ordinance of the City of Casa Grande, Arizona, was involved. It exacted a license fee for the carrying on of any "trade, calling, profession or

business". Various businesses were specified in the ordinance (R. 2-8), including peddlers and transient vendors (R. 7). The ordinance was applied to this appellant, a member of the sect of Jehovah's witnesses, who was tried before a jury (R. 9). Some witnesses testified that he was selling literature while going from house to house (R. 16, 21) and that he asked 25¢ for a book which he offered for sale (R. 16), and 10¢ for three pamphlets (R. 21). Another witness said that he was merely asking for a contribution of 25¢ (R. 24). Appellant himself testified that he asked for contributions (R. 33). The jury was instructed that appellant was accused of selling without a license (R. 39) and that no license was required for free distribution (R. 41). The judgment was affirmed on the ground that the ordinance was an ordinary occupational license tax for the purpose of raising revenue (R. 47) and that it covered this case because the literature was being offered for sale (R. 48). Appellant was held to be a peddler and, therefore, within the ordinance (R. 48).

In the companion case, *Bowden* v. *Fort Smith*, No. 314, the stipulation of facts showed that petitioners while going from house to house distributing literature solicited a contribution of 25¢ for each book (R. 12). At the same time one Cole was charged with handing out a leaflet on the streets for which he asked a contribution of 5¢ (R. 12). The two groups of defendants were tried under different ordinances, Cole under an ordinance which required the payment of a license fee for the distribution of handbills (R. 13) and the other defendants for violation of an ordinance which required a license for house to house peddling (R. 14). The conviction of Cole was reversed on the ground that the license was not conditioned upon sale but covered all distribution. Such an ordinance was held void under decisions of this Court (R. 33-34). The conviction of the other two defendants was upheld on the ground that, since the ordinance was limited to sales, a different rule applied (R. 35-36).

A similar question was before this Court in *Jones* v. *Opelika*, No. 280, dismissed, after argument, for lack of a final judgment—application for rehearing now pending. There the ordinance exacted a license for engaging in the occupation of "book agent" (R. 26) and "transient agent" (R. 38). It was applied to an offer of sale of a religious pamphlet on the public streets (R. 39-44). The price requested was five cents for two copies (R. 40).

We believe that the problem raised by these three cases can be resolved into two questions:

1. Is the constitutional protection afforded the distribution of pamphlets dependent upon their distribution without charge?

2. May a municipality restrict the distribution of pamphlets by imposing a license fee?

POINT I.

The constitutional protection afforded the distribution of pamphlets is not dependent upon their distribution without charge.

This Court, in *Lovell* v. *Griffin*, 303 U. S. 444, and *Schneider* v. *Irvington*, 308 U. S. 147, has established the rule that freedom of the press as guaranteed against state action by the due process clause of the Fourteenth Amendment includes distribution of pamphlets, both on the streets and from house to house.

We do not believe that the broad considerations of policy which led this Court so to decide were affected by the question whether or not distribution was free. On the contrary, we believe that the basic consideration which guided this Court was the importance of the distribution

of "information and opinion." For in one of the cases decided under the name of *Schneider* v. *Irvington*, supra, a voluntary contribution was requested by the distributor; this was not considered significant.

That pamphlets of various kinds have in the past played an important part in our history is well established and has been recognized by this Court.[1] Surely this Court did not mean to confine its observations to pamphlets distributed free. For, as was pointed out in *Commonwealth* v. *Reid*, 20 A. 2nd (Pa.) 841, the famous pamphlets of our history were not circulated without charge, but were either distributed to subscribers or were sold on the streets. See also *City of Blue Island* v. *Kozul*, Illinois Supreme Court, not yet reported. Paine's *Commonsense*, for instance, was originally published to be sold at 2 s.; and his *American Crisis* was also not given away, for it produced profits which he dedicated to the service of the American Revolution (see Introduction to Paine's Political Writings, London, 1909, pp. 3, 5).

That pamphlets continue to be of importance in the instruction of the public and the formulation of public policy can hardly be doubted. Indeed, under modern conditions pamphlets are even more essential for such purposes, since it has become increasingly difficult, by reason of technical requirements and expense, to establish newspapers.

No valid reason can exist for making any distinctions between free distribution, as in three of the cases decided under the name of *Schneider* v. *Irvington*, supra, distribution accompanied by solicitation for contributions, as in the fourth *Schneider* case and the *Bowden* case, or distribution, as in the *Jones* case and the case at bar, accompanied by a fixed price demanded for each pamphlet distributed. To make such distinctions would militate against

[1] *Grosjean v. American Press Company*, 297 U. S. 233, 245; *Thornhill v. Alabama*, 310 U. S. 88, 97.

groups desirous of spreading their views who lack financial means; it would facilitate propaganda by the rich and powerful, who are more readily able to use existing means of communication, such as the newspapers and the radio; it would discriminate against those groups in the community least able to make their voices heard through these more conventional media. Surely this Court will not approve laws which have such results.

We believe that in the recent case of *Valentine* v. *Chrestensen* this Court recognized the principle for which we are contending. For in holding that the distribution of "purely commercial advertising" was not protected by the Constitution, Mr. Justice Roberts made a distinction between the pursuit of a "gainful occupation" and the communication of information and opinion. Surely the activities of Jehovah's witnesses in these cases cannot be classified as "gainful occupation."

That distribution of pamphlets should be unrestricted, even though a price be exacted for them, has been widely recognized. The courts have uniformly held that attempts to restrict the sale of printed matter which consisted of expressions of opinion were unconstitutional:

Zimmerman v. *Village of London*, 38 F. Supp. 582;
Reid v. *Borough of Brookville*, 39 F. Supp. 30;
Donley v. *City of Colorado Springs*, 40 F. Supp. 15;
State ex rel. Hough v. *Woodruff*,[2] 2 So. 2nd (Fla.) 577;
Thomas v. *City of Atlanta*,[2] 59 Ga. App. 520;
Village of South Holland v. *Stein*, 373 Ill. 472;
City of Blue Island v. *Kozul*, Ill. Sup. Ct., decided 3/17/42;

[2] In these cases the Court relied rather on the guaranty of religious freedom than on that of freedom of the press.

Herder v. *Shahadi*, 125 N. J. L. 153;
People v. *Banks*, 168 N. Y. Misc. 515;
City of Cincinnati v. *Mosier*, 61 Ohio App. 81;
Commonwealth v. *Reid*, 20 A. 2nd (Pa.) 841;
State v. *Meredith*,[2] 197 S. C. 351;
State v. *Greaves*, 112 Vt. 222;
McConkey v. *City of Fredericksburg*, Va. Sup. Ct., decided 4/13/42.

See also *State ex rel. Semansky* v. *Stark*, 196 La. 307, and *People* v. *Finkelstein*, 170 N. Y. Misc. 188, in which ordinances were construed not to cover the sale of religious or political tracts.

We submit, therefore, that no ordinance prohibiting the sale of pamphlets or giving any official arbitrary power to license such sale would be constitutional. We shall now consider the question whether any different rule should apply because the ordinances in question do not prohibit all sales or give powers of censorship, but accomplish restriction on distribution by exacting a license fee.

POINT II.

A municipality may not restrict the distribution of pamphlets by imposing a license fee.

We believe that the question of the power of the municipality to impose a license fee upon the distribution of matter constituting expression of opinion is not dependent upon whether or not a price is asked for the matter distributed—although the impact of a particular ordinance may depend upon that circumstance.

In each of the cases before this Court the state Court has approved the ordinance as an excise tax upon an occu-

[2] In these cases the Court relied either on the guaranty of religious freedom than on that of freedom of the press.

pation. Thus in the case at bar the Supreme Court of Arizona rested its decision (R. 49) largely upon its own earlier decision in *Giragi* v. *Moore*, 48 Ariz. 33, 49 Ariz. 74, appeal dismissed 301 U. S. 670. But since that case involved a general sales tax, not a license tax, it has no real application here. In the *Bowden* case, the Supreme Court of Arkansas relied chiefly (R. 36) on its earlier decision in *Cook* v. *City of Harrison*, 180 Ark. 546, which, we submit, was incorrectly decided. In the *Jones* case the Alabama Supreme Court thought (R. 6, 7) *Cox* v. *New Hampshire*, 312 U. S. 569, controlling and relied also (R. 7, 8) on *City of Manchester* v. *Leiby*, 117 Fed. 661, cert. den. 313 U. S. 562 and (R. 9) on its own decision in *Ex Parte Stein*, 240 Ala. 324, cert. den., 313 U. S. 562. The *Stein* case is clearly not apposite, since there no question of the distribution of expressions of opinion was involved.

Nor is the *Leiby* case at all pertinent here, since the ordinance there involved was fundamentally different from the ordinances in the three cases now before this Court. For in the *Leiby* case the ordinance did not require the vendor of literature to obtain a license, but only that he get an identification badge. Moreover, it provided that the deposit of 50¢ was to be returned upon the surrender of the badge and that the badge must be immediately issued upon receipt of an application. The language of the Court approving that ordinance must be read in the light of these particular facts. Finally the discussion with regard to the validity of the ordinance was not necessary to the decision, since it might well have rested upon the fact that the constitutional issue was prematurely raised, that being an action to restrain the enforcement of the ordinance. This is made clear from the decision of the same Court in *Hannan* v. *City of Haverhill*, 120 F. 2nd 87, cert. den. 314 U. S. ——. There the Court ruled that it was not necessary to decide a doubtful question with regard to the constitutionality of the ordinance in an action to enjoin the same, citing the *Leiby* case. It held that

the proper way that such question should be raised was by an appeal after conviction in the State Court, particularly since the constitutional question might never arise because of the manner in which the ordinance might be construed by the highest court of the state.

Finally, nothing which this Court decided in the *Cox* case is pertinent here. For in that case this Court was not concerned with the distribution of expressions of opinion, but with the right to use the public streets for the purpose of parade, an entirely different matter. It is one thing to say that a municipality may have the right to require permits for the holding of parades; for these always inconvenience large portions of the public, and it is important that there be no conflict between two parades scheduled for the same time and place. It is quite another thing to say that a municipality may have the right to restrict the distribution of pamphlets constituting expressions of opinion on the public streets merely because a price is asked for the same.

Indeed, the *Cox* case indicates that a result contrary to that reached in the State Court is the proper one. For in that case this Court was careful to point out, in discussing the reasonableness of the license fee charged, that the same was not imposed as a revenue measure but solely to meet the expense incident to the administration of the law and to the maintenance of public order. The implication is clear that a statute imposing a tax upon the holding of a parade would have been held unconstitutional. Surely the distribution of leaflets is even more important to the maintenance of freedom of speech. And again it can make no difference that the ordinance is restricted to distribution for which a price is charged. Since in the case at bar, therefore, there is no contention that the license was exacted for the purpose of defraying police expenses—and there could be no such contention—the ordinance is invalid.

For it cannot be doubted that the enforcement of ordinances of the type here under review would seriously

restrict the dissemination of opinion. In the case at bar the fee required is $25 quarterly per person (R. 7); in the *Bowden* case $25 per month per person (R. 14); in the *Jones* case either $10 per year (R. 26) or $5 per year (R. 38) per person, depending upon which provision of the ordinance was held applicable. It can readily be seen that were any large number of communities to impose license fees of this character the work carried on by Jehovah's witnesses would become impossible. They would either have to abandon any attempt to collect money in connection with the distribution of their literature or pay thousands of dollars a year in license fees. Moreover, it would be possible for communities which disliked their activities to prevent them altogether, either by delaying granting licenses, there being nothing in these ordinances requiring the immediate issuance of a license, or by revoking licenses without notice, which the City Commission is expressly given the right to do in the *Jones* case (R. 22).

The ordinances here under review cannot be sustained, therefore, on the basis of any federal decisions. Nor can they be upheld on the theory that regulation of the use of the streets is involved. For no one of these ordinances in any way restricts any particular use of the streets. There is here no evidence to support any inference that any of the distributors sought to establish himself upon the public streets in any particular place for the purpose of carrying on a business there. In that respect these cases differ entirely from *Comomnwealth* v. *Pascone*, 308 Mass. 591, cert. den. 314 U. S. ——. In that case the Massachusetts Court expressly held that the ordinance was not aimed at persons "simply going about from place to place." That ruling constituted such a construction of the ordinance as to make it clear that what was attempted was the regulation of a business, not a restriction upon the dissemination of opinion. However, in the cases now under consideration none of the State Supreme Courts limited its approval of the ordinances in any similar man-

ner. Nor was there any evidence which would have supported a conviction under an ordinance so restricted.

That an ordinance of the type involved in these cases is not regulatory in any true sense was recognized by the Supreme Court of Vermont in *State* v. *Greaves*, supra. That Court held that the imposition of a license fee was a restraint upon circulation within the *Grosjean* case, supra, as well as within the *Lovell* and other decisions of this Court already cited herein. And in the *Kozul* case, supra, the Supreme Court of Illinois took the same position and held, furthermore, that those decisions of this Court compelled a ruling that a license tax such as this could not be sustained as a revenue measure. Citing *Magnano Co.* v. *Hamilton*, 292 U. S. 40, Chief Justice Murphy pointed out that, by increasing the amount of the tax, circulation could be effectively prohibited.[3] He expressly stated that it made no difference whether the ordinance provided for censorship through licensing, as in the *Lovell* case, or, as here, for a license through taxation: "In either event the effect is that there is an abridgement of the freedom of the press."

The Virginia Supreme Court has just held a similar ordinance void on the ground that the imposition of a license fee under the circumstances disclosed (substantially those of the cases here under consideration) was so burdensome as to amount to a prohibition. (*McConkey* v. *City of Fredericksburg*, not yet reported.) This decision is clearly in accord with the statement of this Court in the *Chrestensen* case, supra, that municipal authorities may not "unduly burden" the dissemination of information and opinion on the streets.

Like results were reached in *Thomas* v. *City of Atlanta*; *People* v. *Banks*; *City of Cincinnati* v. *Mosier* and *Commonwealth* v. *Reid*, supra.

We are just informed that a different result has been reached by the Court of Appeals for the District of Colum-

[3] As already noted, the same result may be achieved by an aggregate of relatively small fees imposed by numerous municipalities.

bia in *Busey* v. *District of Columbia*, decided April 15, 1942, but that a strong dissenting opinion was written by Justice Rutledge, which we believe expresses the better view.

It has been urged that the ordinances can be sustained as revenue measures under the statements of this Court in the *Grosjean* case, supra, and in *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 133. Cf. *Arizona Publishing Company* v. *O'Neil*, 22 F. Supp. 117, affirmed per curiam 304 U. S. 543. There can, of course, be no doubt that persons engaged in commercial enterprises, which incidentally involve the distribution of organs of opinion, cannot claim exemption from taxes generally imposed. And the Arizona statute involved in the *O'Neil* case comes within that general category. For there the State imposed a general sales tax on the gross proceeds of business carried on in the state. The tax was not directed at the distribution of opinion.

But the ordinances now before the Court are of an entirely different character. If they be construed as imposing any tax, it is an occupation tax, and, as applied to Jehovah's witnesses, a tax on the sole occupation of distributing leaflets constituting expressions of opinion. It cannot be doubted that had the municipality sought to enforce an ordinance of this type against a person who was freely distributing such leaflets this attempt would have been void. That was recognized by the Arkansas Supreme Court when it reversed the conviction of Cole (No. 314, R. 33, 34). For this Court has held the right to distribute such leaflets to be protected by the Fourteenth Amendment. Any attempt to tax the exercise of such right would, therefore, be a tax on a privilege guaranteed by the United States Constitution and invalid. See *Colgate* v. *Harvey*, 296 U. S. 404[4]; *Crandall* v. *Nevada*, 6 Wall. 35.

We have already pointed out that the circumstance that a price is asked for the leaflet distributed can make no

[4] The overruling of that case in *Madden* v. *Kentucky*, 309 U. S. 83, does not affect the principle here contended for.

difference in the application of the fundamental constitutional principle. We are not dealing here with a commercial enterprise such as was involved in the two Arizona cases, but with persons whose sole occupation it is to spread the truth as they see it, sometimes, as in the *Bowden* case, asking for a contribution, at other times, as in the case at bar and the *Jones* case, asking for a flat price for each leaflet distributed. We do not believe that the statements which this Court has made with regard to the liability of newspapers to pay ordinary taxes were intended to permit the taxation of persons situated as are these members of Jehovah's witnesses.

We submit, therefore, that the convictions in these cases should be reversed and the ordinances held invalid as applied. We believe that this Court should make it clear that the constitutional protection extends to all forms of distribution of opinion and information, that the same cannot be prohibited or taxed, that the circumstance that money is asked, whether directly or otherwise, is entirely immaterial. That will still leave to the states and their municipalities full power to regulate the use of the streets so as to prevent the usurpation of the same, either by a particular individual seeking to establish himself in business at a particular place, as in the *Pascone* case, or by a group of individuals seeking, by the device of a parade, to occupy the whole street, as in the *Cox* case. It will also leave municipalities free to regulate house to house canvassing so as to prevent fraud and annoyance, as was suggested in the *Schneider* case. Whether a municipality can go further and require distributors to obtain some badge of identification upon the making of a nominal deposit for the same, as in the *Leiby* case, need not be decided at this time. Clear it is, however, that to permit municipalities to exact license fees for the distribution or sale of pamphlets would effectively restrict and in many cases make impossible such distribution. And it can make no difference that in a particular case the amount charged may be relatively small.

The effect of upholding ordinances of this kind on the distribution of literature is bound to be catastrophic. No considerations of state public policy require such result. For, as already noted, these ordinances are not really regulatory at all. Here we have, therefore, situations in which this Court should be "astute" to examine the effect of the legislation attacked (see *Schneider* v. *Irvington*, supra). So viewed, the ordinances in this, the *Bowden* and the *Jones* cases, must, as applied to Jehovah's witnesses, be held unconstitutional.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
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